



# Cedar City

10 North Main Street • Cedar City, UT 84720  
435-586-2950 • FAX 435-586-4362  
[www.cedarcity.org](http://www.cedarcity.org)

## **CITY COUNCIL WORK MEETING** **FEBRUARY 5, 2014**

### **Mayor**

Maile L. Wilson

### **Council Members**

Ronald R. Adams  
John Black  
Paul Cozzens  
Don Marchant  
Fred C Rowley

### **City Manager**

Rick Holman

The City Council will hold a work meeting on Wednesday, February 5, 2014, at 5:30 p.m., in the Council Chambers at the City Office, 10 North Main Street, Cedar City, Utah. The agenda will consist of the following items:

I. Call to Order

II. Agenda Order Approval

III. Administration Agenda

- Mayor and Council Business
- Staff Comment

IV. Public Agenda

- Public Comments

V. Business Agenda  
Public

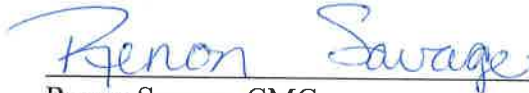
1. Request to remove approximately 60 foot section of the center island in the vicinity of 701 North Aviation Way – John Pappas of Roofers Supply/Mike McHugh, Utah Commercial Contractors
2. Consider a contract with Festival Country K-9 for the lease of fly ball equipment – Festival Country K-9/Paul Bittmenn
3. Consider a resolution amending the City's master planned land use from Industrial and Heavy Manufacturing to Business and Light Manufacturing on property located in the vicinity of Kitty Hawk Way and Bulldog Road – Ron Larsen of In Site Engineering/Paul Bittmenn
4. Consider an ordinance amending the City's zone from Industrial and Manufacturing-2 to (I&M-2) to Industrial and Manufacturing-1 (I&M-1) on property located in the vicinity of Kitty Hawk and Bulldog Road – Ron Larsen of In Site Engineering/Paul Bittmenn

Staff

5. Review of the Municipal Wastewater Planning Program – Darrell Olmsted
6. Consider Grant contract for UDOT funds from FY 2012 for CATS – Ryan Marshall/Tammy Nay
7. Review bids for the Cedar Canyon Water Tank replacement project – Jonathan Stathis
8. Review Agreement with UDOT for maintenance of the landscaping on the reconstructed South Interchange – Kit Wareham
9. Review agreement with Rocky Mountain Power to upgrade the power service to the Wastewater Treatment Plant for the Nitrate Removal project – Kit Wareham


10. Consider granting an easement to Rocky Mountain Power to upgrade the power service to the Wastewater Treatment Plant for the Nitrate Removal project – Kit Wareham
11. Consider a resolution establishing a City policy related to event insurance requirements – Paul Bittmenn
12. Consider amendments to the Purchasing Policy
13. Consider appointments to the Parks & Recreation Advisory Committee – Mayor Wilson
14. Discuss Animal Control ordinance – Paul Bittmenn

Dated this 3<sup>rd</sup> day of February, 2014.

  
Renon Savage, CMC  
City Recorder

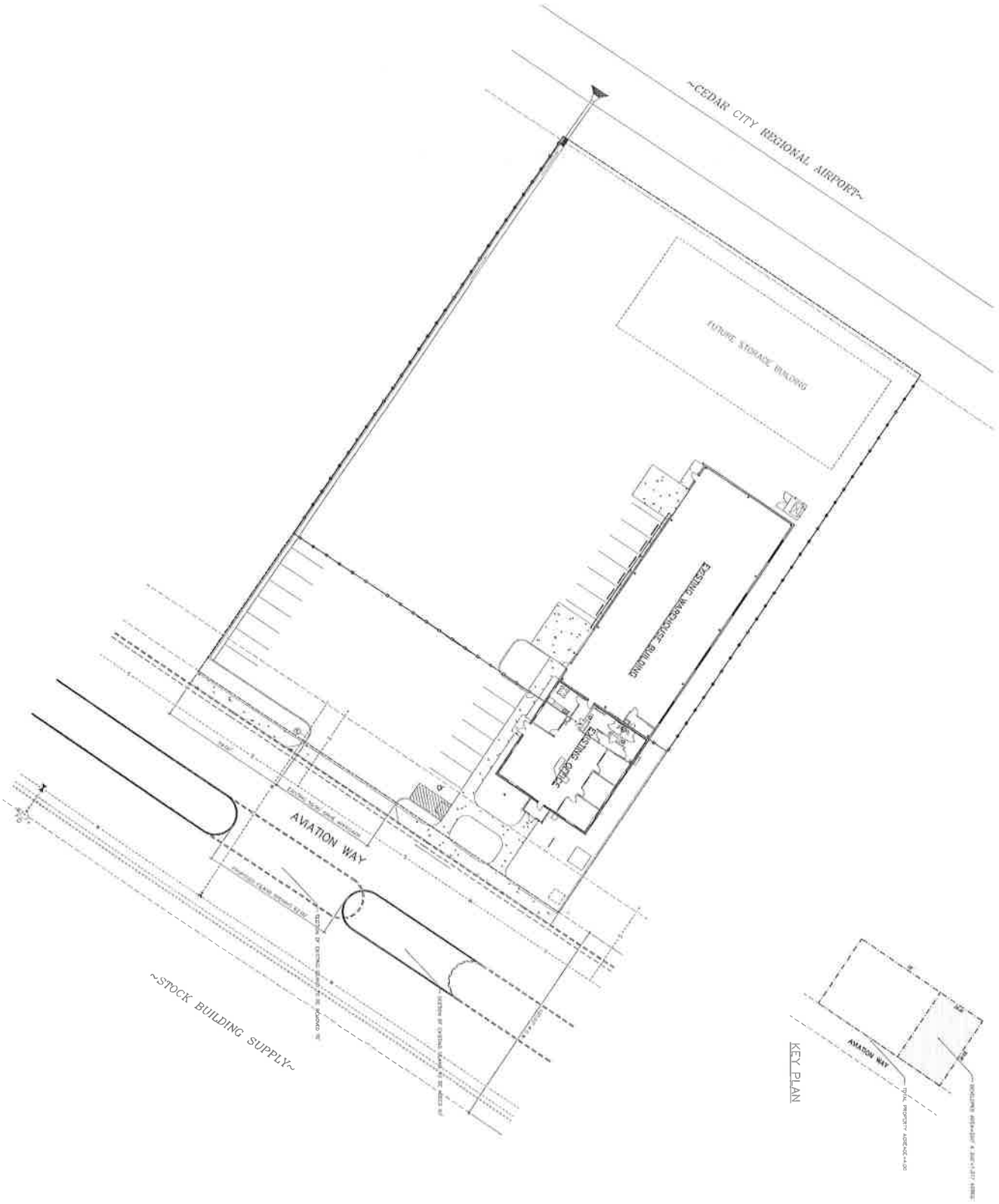
**CERTIFICATE OF DELIVERY:**

The undersigned duly appointed and acting recorder for the municipality of Cedar City, Utah, hereby certifies that a copy of the foregoing Notice of Agenda was delivered to the Daily News, and each member of the governing body this 3<sup>rd</sup> day of February, 2014.

  
Renon Savage, CMC  
City Recorder

Cedar City Corporation does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

If you are planning to attend this public meeting and, due to a disability, need assistance in accessing, understanding or participating in the meeting, please notify the City not later than the day before the meeting and we will try to provide whatever assistance may be required.



KEY PLAN

SCALE 1"=20'

1-20-14

SD1

NO. 1	DATE	REVISION
1	11-11-14	ISSUED FOR PERMITTING

**PROPOSED SITE PLAN**  
**ROOFERS SUPPLY, INC.**  
701 NORTH AVIATION WAY  
CEDAR CITY, UTAH 84721  
PREPARED FOR  
**UTAH COMMERCIAL CONTRACTORS, INC.**

**BONNEVILLE DESIGN**  
CONSULTING ENGINEERS  
P.O. BOX 298  
MAGNA, UTAH  
PHONE: (801) 250-7362 FAX: (801) 298-6843







CEDAR CITY COUNCIL  
AGENDA ITEMS V - 2  
DECISION PAPER

**TO:** Mayor and City Council

**FROM:** Paul Bittmenn

**DATE:** February 3, 2014

**SUBJECT:** Equipment lease with festival country K9

**DISCUSSION:**

The attached lease was approved by the Council last spring. Festival Country K9 would like to propose some changes. Their changes appear in the attached document and are summarized as follows:

1. Page #1, 4<sup>th</sup> paragraph from the top, K9 wants to eliminate the purchase of 6 flyball mats and purchase 1 flyball box and 4 flyball hurdles.
2. Page #2, Paragraph #2, K9 proposes an yearly lease payment of \$1.00 for use of the equipment.
3. Page #2, Paragraph #3, K9 proposes to change to the method of storing the equipment. The original idea was to keep it in a locked and secure trailer, the proposed change is to keep the equipment at one of the K9 member's home and transport it vial trailer to events.
4. Page #3, Paragraph #5, K9 proposes to change the required insurance to \$2,000,000.00. Please note if the Council approves the resolution on this agenda related to a procedure setting insurance rates the K9 will be allowed to lower the insurance to \$1,000,000.00.
5. Page #4, Paragraph #11, K9 has completed some contact information.
6. Page 7 there are some changes to the signature page.

Please consider adopting the agreement with Festival Country K9. Please call if you have questions.



## EQUIPMENT LEASE AGREEMENT

This agreement is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2013, between Cedar City Corporation, a Utah political subdivision and municipal corporation, hereinafter referred to as City; and Friends of Festival Country K9's, a Utah non-profit corporation, hereinafter referred to as K9s.

**WHEREAS**, City has imposed a RAP tax pursuant to Utah Code Annotated, Title 59, Chapter 12, Section 1401 et. seq., for the purpose of funding recreation, arts, and parks in a manner consistent with State law and the City's adopted ordinances; and

**WHEREAS**, during the fiscal year 2013 – 2014 application period K9s petitioned the City for \$5,000.00 to purchase standard tournament and agility equipment approved by the American Kennel Club and the North American Flyball Association; and

**WHEREAS**, K9s proposes to have the City purchase the following equipment: ~~six (6) Flyball mats;~~ one (1) FlyBall box, four (4) Flyball hurdles, one (1) dog agility tunnel; one (1) agility chute; one (1) breakaway PVC tire jump; one (1) A frame painted sand surface; one (1) pause table; one (1) panel jump; one (1) wing jump; one (1) 12' dog walk; one (1) teeter; and one (1) set of weave poles, hereinafter collectively referenced as Equipment or the Equipment; and

**WHEREAS**, shortfalls between RAP tax funding and the ultimate cost of the Equipment shall be paid through funds raised by K9s; and

**WHEREAS**, the Equipment would allow K9s to host nationally-sanctioned Flyball events in Cedar City and expand existing training classes for the local community; and

**WHEREAS**, K9s projects the expansion of existing training classes and expansion of tournament hosting will have a positive impact on City's economy as well as recreational opportunities available to the City's residents; and

**WHEREAS**, K9s believes other positive future benefits for the purchase of the Equipment may include: the ability to host free public events; increased socialization and obedience class offerings; and possible future ties with law enforcement; and

**WHEREAS**, the City's governing body has agreed to appropriate the above requested funding for the City to purchase the Equipment; and

**WHEREAS**, it is in the best interest of City and K9s to enter into this equipment lease agreement to spell out the terms and conditions upon which K9s will lease the Equipment from City.

**NOW THEREFORE** City and K9s hereby agree that adequate consideration exists to support the formation of this agreement and both agree as follows:

*Remainder of page intentionally left blank.*

1. Purchase and Ownership of Equipment.

In accordance with City's purchasing policies, City shall purchase the Equipment. During the purchase of the Equipment, City shall coordinate with K9s to ensure that the type of equipment, quality of equipment, and other specifications for the equipment meet K9s needs.

2. Equipment Lease.

City agrees to lease the Equipment to K9s for           \$1.00           dollars per year. K9s shall pay the first year's lease payment prior to taking possession of the Equipment and each year thereafter on the anniversary of K9s taking possession of the Equipment. If lease payments are not made on time, then City may charge K9s a 5% late fee and/or terminate the lease. Upon delivery of the Equipment City shall issue to K9s a receipt showing an Equipment inventory and the date of delivery. Any variation between this agreement and the Equipment inventory on delivery shall be resolved in favor of the Equipment inventory. The Equipment inventory shall also serve as the date upon which lease payments shall be made.

This lease shall have an initial term of three (3) years. Upon the mutual agreement of K9s and City the term of the lease may be extended for up to two (2) additional and consecutive three (3) year terms.

3. Equipment Storage.

The equipment once purchased will be kept in a locked & secure building at 4891 West 1000 South, Cedar City, Utah (Gil's home) and will be hauled in a trailer to locations for classes, training, events and seminars.

~~K9s at its sole expense shall purchase an enclosed weather tight trailer capable of storing and transporting all of the Equipment. K9s shall keep the trailer locked and secure while storing the equipment. K9s shall maintain the trailer off of the public streets and in a location where it is lawful to store a trailer. K9s shall be responsible to reasonably secure all of the Equipment with tie downs, rope, or other suitable material so as to avoid damage during transportation. K9s shall provide City with an address where the trailer will be kept while the Equipment is not being used. If the address changes K9s shall provide City with a new address within a reasonable time. City shall have the right to inspect the Equipment at any time during the length of the Agreement upon providing K9s reasonable notice. K9s shall accommodate City's inspection requests.~~

4. Equipment Condition, Maintenance, Responsibility for Loss.

K9s is accepting the equipment in new condition. K9s is responsible for all maintenance of the Equipment with the exception of normal wear and tear. K9s is responsible to replace lost or stolen equipment. At the end of the lease K9s shall return Equipment to City in the same condition, less normal wear and tear, that it was presented to them at the beginning

of the lease. K9s shall be responsible to replace broken equipment with equipment of comparable quality and workmanship.

5. Insurance.

K9S shall maintain such insurance naming City as an additional insured. Said insurance shall have limits equal to or in excess of ~~the liability caps contained in the Utah Governmental Immunity Act. The current liability caps can be found in Utah Administrative Rule R37-4-3 and are \$674,000 for one person in an occurrence, \$2,308,400 aggregate for two or more persons in an occurrence, and \$269,700 for property damage for any one occurrence as explained in R37-4-2(2). These limits are adjusted every two (2) years by the State of Utah Risk Manager in accordance with Statute and Administrative Rules. K9s shall maintain insurance with limits that meet or exceed the adjustments. two million dollars (\$2,000,000.00).~~ K9s shall provide City with a certificate of insurance naming City as an additional insured and keep said certificate of insurance current during the life of this agreement. If K9s uses City property to host an event, then K9s shall meet such additional insurance requirements as City may impose.

6. Indemnification and Hold Harmless.

K9s agrees to indemnify, defend, and hold harmless City, its elected and appointed officials, its employees, agents, and assigns from any and all claims, damages, losses, expense, and other liabilities as may be associated with the use and maintenance of the Equipment.

7. Use of Waivers.

In order to limit risk and financial exposure K9s agrees to require participants in events that may be using the Equipment to sign waivers acknowledging the risks associated with such activities and waiving any liability on behalf of K9s and City due to the use of the equipment.

8. Recovery of Property.

City reserves the right and K9s agrees that if City inspects the condition of the Equipment and finds that the Equipment is not being stored properly or is not being reasonably maintained, City may recover the property. City shall give notice of its intent to recover the Equipment to K9s and K9s shall make the Equipment available to City for the recovery effort. If K9s does not agree that the Equipment is not being stored properly or is not being reasonably maintained K9s may appeal the staff decision to the City Manager. The decision of the City Manager is final.

*Remainder of page intentionally left blank.*

9. Publicity.

K9s agrees to include an acknowledgement on their storage trailer, web page, and banners that the Flyball equipment was purchased with RAP tax money. K9s may use the same style of acknowledgement that is used by the City's Leisure Services Department.

10. Exclusive Use and Ability to Sub-Let.

City agrees that K9s is to have exclusive use of the Equipment during the term of this lease with one exception. City's Police Department shall be allowed to use the Equipment upon providing reasonable notice and without paying a fee for activities where the Equipment will be beneficial in the training of or the demonstration of police K9 officers. If the Police request use of the Equipment, K9s and the Police Department shall work in a cooperative manner to schedule the use of the Equipment. During the time the Police Department is using the Equipment the Police Department shall be liable for damage to the Equipment, less normal wear and tear.

Except as provided above, K9s shall have exclusive use of the Equipment. This shall include the right and ability to sub-let the Equipment to other entities. If K9s does allow another entity to sub-let or use the Equipment K9s shall remain liable to City to store and maintain the Equipment consistent with the provisions of this agreement.

11. Notices.

Notices required to be sent pursuant to the terms and conditions of this agreement shall be deemed to have been sent if they are sent via first class mail, postage pre-paid to the following addresses, or via email to the following email addresses:

Cedar City Corporation  
c/o Leisure Services Director  
10 North Main Street  
Cedar City, Utah 84720  
[rdan@cedarcity.org](mailto:rdan@cedarcity.org)

Friends of Festival Country K9s  
c/o Diane Gil  
4891 W 1000 S  
Cedar City, Utah 84720

[festivalcountryk9s@gmail.com](mailto:festivalcountryk9s@gmail.com)

In the event the contact information changes, the party changing contact information has the duty to inform the other party. If email is the preferred method of providing notice and the contact information has changed and the party changing the contact information has not updated the other party, then the other party shall have the responsibility to check the

web page for the other party to access a correct email address. City's web page address is [www.cedarcity.org](http://www.cedarcity.org). K9s web page address is [www.festivalcountryk9s.org](http://www.festivalcountryk9s.org).

12. Agreement Termination.

Upon termination of this agreement K9s shall immediately return all Equipment to City. This agreement may be terminated by either City or K9s without cause by providing sixty (60) days written notice.

13. Choice of Law, Jurisdiction, and Venue.

This agreement shall be governed by the laws of the State of Utah. Jurisdiction is vested in the Utah District Courts. Venue is vested in the 5<sup>th</sup> Judicial District Court in and for Iron County, State of Utah.

*Remainder of page intentionally left blank.*

14. Attorney Fees.

In the case of a dispute where either party believes it is in their best interest to employ the services of an attorney, each party shall pay their own attorney fees and each party shall pay all of their own costs associated with resolving the issue whether the resolution is through various methods of dispute resolution or through litigation.

15. Integration and Modification.

This written agreement and the documentation contemplated by the terms hereof constitutes the entire agreement between City and K9s for the lease of the Equipment. This is an integrated agreement and shall be interpreted without reference to external evidence. No written or oral communications between the parties hereto either prior to the agreement, or subsequent to entering the agreement may be interpreted to alter the terms and conditions of the agreement. The only method available to the parties to modify the terms of the agreement shall be through a mutually agreed to set of amendments that are reduced to writing and duly approved and signed by both City and K9s.

City's signature page.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
JOE BURGESS  
MAYOR

[SEAL]  
ATTEST:

\_\_\_\_\_  
RENON SAVAGE  
RECORDER  
STATE OF UTAH       )  
                                  :SS.  
COUNTY OF IRON     )

Field Cod

This is to certify that on the \_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned, a Notary Public, in and for the State of Utah, duly commissioned and sworn as such, personally appeared Joe Burgess, known to me to be the Mayor of Cedar City Corporation, and Renon Savage, known to me to be the City Recorder of Cedar City Corporation, and acknowledged to me that he the said Joe Burgess and she the said Renon Savage executed the foregoing instrument as a free and voluntary act and deed of said corporation, for the uses and purposes therein, and on oath state that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove written.

NOTARY PUBLIC



K9s signature page.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

By: Diane Gil  
Its: President FFCK9s

STATE OF UTAH       )  
                              :SS,  
COUNTY OF IRON    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, Diane Gil personally appeared before me who duly acknowledged to me that \_\_\_she signed the above and foregoing document.

NOTARY PUBLIC



CEDAR CITY COUNCIL  
AGENDA ITEMS V - 3  
DECISION PAPER

**TO:** Mayor and City Council

**FROM:** Paul Bittmenn

**DATE:** February 3, 2014

**SUBJECT:** Resolution to amend the City's master plan for property located in the vicinity of the intersection of Bulldog Road and Kittyhawk Way

**DISCUSSION:**

Attached is a resolution to amend the City's general land use plan. This is some of the same property involved in the agreements approved last week to delay the instillation of required infrastructure.

The Current general land use plan designation for this property is industrial and heavy manufacturing. The purpose of the industrial and heavy manufacturing land use designation is to establish principally large parcels suitable for buildings and development catering to heavy manufacturing uses within larger, predominantly, single-level structures. This land use designation is associated with areas where access for large trucks and rail is required for both raw materials and finished product shipping. Mining and extraction activities are allowed subject to limitations specified within the City Code. Buffer zones are required next to residential areas.

The proposed land use plan designation for this property is Business and Light Manufacturing. The purpose of the Business and Light Manufacturing land use designation is to establish land areas suitable for general business operations and smaller warehousing or assembly facilities with automobile, and truck access and where rail access may be available for limited use. This residential land use area encourages the use of buffers between it and residential zones.

In 2012 when it was adopted the General Land use Plan included the following general policy statement, "this General Plan is a policy document reflecting the general interests of the community. It is designed to guide decisions and establish priorities affecting the future development within the city and thereby, assist in defining the character of the community". State law says the effect of the general plan is an advisory guide for land use decisions, see UCA §10-9a-405.

The City Council has the ability to amend the general land use plan after holding a public hearing. In order to meet the publication requirements the public hearing for this matter will be held next week. So, please hear the presentation tonight from the project proponents and then hear any public comments next during the public hearing before you vote. Attached are the planning commission minutes and a map for your reference. If you have any questions please call.

CEDAR CITY RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CEDAR CITY COUNCIL AMENDING CEDAR CITY'S GENERAL LAND USE PLAN FROM INDUSTRIAL AND MANUFACTURING TO BUSINESS AND LIGHT MANUFACTURING ON PROPERTY LOCATED IN THE VICINITY OF THE INTERSECTION OF BULLDOG ROAD AND KITTYHAWK WAY.

**WHEREAS**, the owners of property located in the vicinity of the intersection of Bulldog Road and Kittyhawk Way have petitioned the City to change the general land use designation from industrial and manufacturing to business and light manufacturing, the property involved in this petition is more particularly described as:

BEGINNING AT A POINT S 89°23'41" E ALONG THE 1/16 SECTION LINE 82.59 FEET FROM THE CENTER SOUTH 1/16 CORNER OF SECTION 3, T36S, R11W, SLB & M (SAID POINT BEING ON THE EAST R.O.W. LINE OF BULLDOG ROAD) AND RUNNING THENCE N 02°37'25" E ALONG THE EAST LINE OF BULLDOG ROAD 696.33 FEET; THENCE S 87°22'35" E 199.27 FEET; THENCE S 39°22'32" E 370.05; THENCE S 87°22'35" E 81.30 FEET TO THE WEST LINE OF INTERSTATE 15; THENCE ALONG SAID WEST LINE S 18°02'22" W 116.24 FEET; THENCE ALONG SAID WEST LINE S 14°04'37" W 221.27 FEET TO A CURVE TO THE LEFT, THENCE 69.65 FEET THROUGH A CENTRAL ANGLE OF 00°10'24" AND RADIUS OF 23038.32 FEET; THENCE LEAVING THE I-15 RIGHT OF WAY S 89°23'41" W 437.86 FEET TO THE POINT OF BEGINNING.

**WHEREAS**, after providing public notice as required by State Law the Cedar City Planning Commission considered the proposed amendment to the City's general land use plan and gave it a positive recommendation; and

**WHEREAS**, the City Council after duly publishing and holding a public hearing to consider the proposed general land use amendment finds that it is in the best interest of the general welfare of Cedar City to adopt the proposed amendment to the Cedar City General Land use plan.

**NOW THEREFORE BE IT RESOLVED** by the City Council of Cedar City, State of Utah, that the City's general land use plan and the City's general land use plan map be amended so that the above described land is designated Business and Light Manufacturing.

AYES \_\_\_\_\_ NAYS \_\_\_\_\_ ABSTAINED \_\_\_\_\_

*Remainder of page intentionally left blank.*

This resolution, Cedar City Resolution No. \_\_\_\_\_, shall become effective immediately upon passage by the City Council and being signed by the Mayor.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAILE L. WILSON  
MAYOR

[SEAL]  
ATTEST:

\_\_\_\_\_  
RENON SAVAGE  
RECORDER

## CEDAR CITY PLANNING COMMISSION

### MINUTES

January 21, 2014

The Cedar City Planning Commission held a Meeting on Tuesday, January 21, 2014, at 5:15 p.m., in the Cedar City Council Chambers, 10 North Main, Cedar City, Utah.

Members in attendance: - Chairperson, Fred Rowley, Rich Gillette, Mike Mitchell, Vance Smith

Members absent: Kent Peterson-excused, Jill Peterson, Kristie McMullin

Staff in attendance: Larry Palmer, Kit Wareham, Paul Bittmenn, and Michal Adams

Others in attendance: Ron Larsen

**Mike moved to appoint Rich G. the chair pro-tem, seconded by Fred and the vote was unanimous.**

The meeting was called to order at: 5:20 p.m.

#### ITEM/ REQUESTED MOTION

#### LOCATION/PROJECT

#### APPLICANT/ PRESENTER

#### I. Regular Items

##### **1- Approval of Minutes (December 17, 2013)**

**(Approval)**

**Mike moved to approve the minutes of December 17, 2013, seconded by Vance and the vote was unanimous.**

##### **2- General Land Use Amend. East side of Bulldog Rd at (Recommendation) Kittyhawk to allow Business & Light Manufacturing**

**Jones/ InSite Eng.**

Ron L. showed the area, between the highway and Bulldog Road where Kittyhawk Drive comes in. The General Plan shows all north of that Kittyhawk line to be I&M-2 but they would like to make the area south of that all I&M-1 so the General Plan needs to be changed to show that also. It was asked if there were light manufacturing in the area. Ron pointed out that most all the area around this is only the I&M-1 not the heavy manufacturing of I&M-2. All to the south is business and light manufacturing and they would like to change that line to go around the one other parcel so it can be business and light manufacturing.

Fred pointed out then, that part of this piece is one zone, and part is another zone. Ron explained they have a better chance of selling this if this is changed. The I&M-2 is so limited in what you can do they are trying to make smaller lots to be more versatile. I&M-2 is mostly gravel pits and there would never be a need to have a gravel pit here. Also, the creek flows thru the middle of this piece.

It was wondered just how this would be split up. Ron explained that the minor lot that will come thru would create the separate lots. The Coal Creek Irrigation company would then swap the most southern piece for the one that the creek goes through. Then, everything north of the creek will stay heavy manufacturing, with the parcel south of the creek being changed to the

business and light manufacturing.

Fred wondered if those things west of this would be considered light manufacturing. Larry pointed out different businesses along there and most of that would fall into the light manufacturing. Fred said that making this also the light manufacturing then, would make more sense.

Vance wondered if this was all one parcel up until now. Ron said it is all owned by the irrigation company and the Jones. They will trade the south parcel for the creek parcel when it is subdivided.

Fred pointed out that there needs to be two recommendations, one for the land use change and one for the zone change.

Paul pointed out that not so many years ago, if there were no other light manufacturing in this area that would be considered a spot zone. That terminology is not used as much and when following a General Plan, if you change something in the middle, it is hard to defend. But if there is the same use in the same area, as in this case, as there is light manufacturing all around, it is easier to change.

Vance pointed out that the creek makes a natural boundary between the two uses. He was also curious as to why the owners wanted to make these changes. Ron said they want the smaller lots because of what they want to do their works much better in the I&M-1 zone. They just want to change the use below the creek to make these smaller lots.

**Vance moved to give favorable recommendations for both the land use change to be Business and Light Manufacturing and also the zone change from I&M-2 to I&M-1 on the same area to the City Council. Mike seconded and the vote was unanimous.**

**3- Zone Change**

**I&M-2 to I&M-1**

**(Recommendation)**

**East side of Bulldog Rd at Kittyhawk**

**Jones/InSite Eng.**

**Discussed and voted upon in Item #2.**

The meeting adjourned at 5:45 p.m.

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Michal Adams, Administrative Assistant

[illegible]

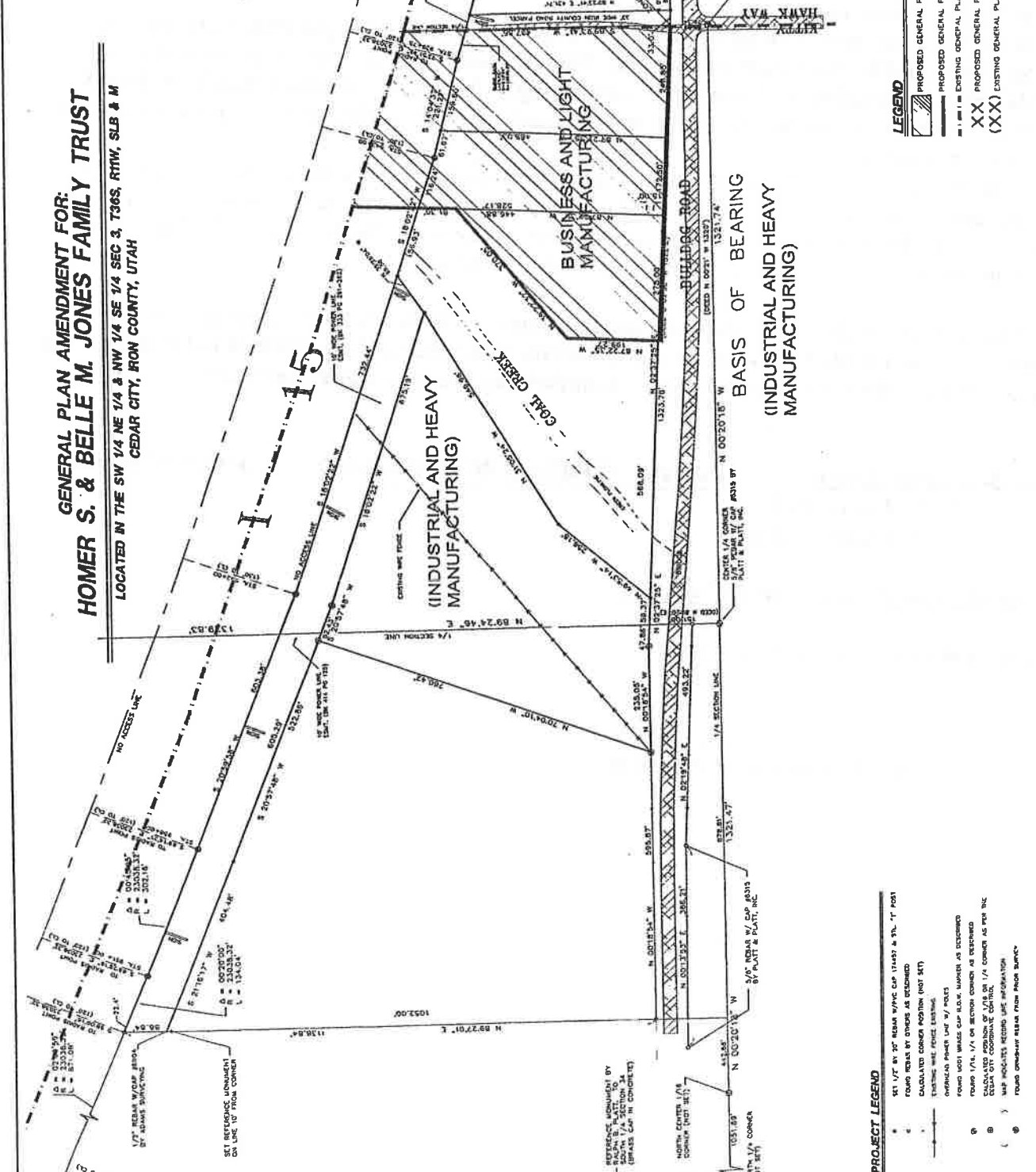
**InSite**  
Engineering, P.C.  
Civil Engineers • Land Surveyors • Land Planners  
1000 N. Royal Avenue Dr., Suite 200  
Cedar City, Utah 84701  
Phone: (435) 863-1700

PROPOSED GENERAL PLAN AMENDMENT  
JONES FAMILY TRUST  
1005 NORTH BULLDOG ROAD  
CEDAR CITY, IRON COUNTY, UTAH






DATE, NAME  
SCALE 1" = 10'

JOB NO.

1 OF 2



**LEGEND**

	PROPOSED GENERAL PLAN CHANGE AREA
	PROPOSED GENERAL PLAN AREA LINE
	EXISTING GENERAL PLAN AREA LINE
	PROPOSED GENERAL PLAN AREA
	EXISTING GENERAL PLAN AREA

### PROJECT LEGEND

SET 1/2 IN. 30° BEAM W/40° CAP 114.657 & 31.1° POST  
FOUND REBAR BY OTHERS AS DESCRIBED  
CALCULATED CORNER POSITION (NOT SET)  
EXTENDING THE FORCE LINES  
OVERLAP POWER LINE W/ POLES  
FOUND 100' WALLS CAP 114.6° MARKER AS DESCRIBED  
FOUND 1/4 IN. 1/4 ON SECTION CORNER AS DESCRIBED  
CALCULATED POSITION OF 1/8 IN. ON 1/4 CORNER AS PER THE  
CLUBA CITY CORROSION CONTROL  
MAP INDICATES RECORD LINE INFORMATION  
FOUND OVERLAP REBAR FROM POWER TUNNEL



CEDAR CITY COUNCIL  
AGENDA ITEMS V - 4  
DECISION PAPER

**TO:** Mayor and City Council

**FROM:** Paul Bittmenn

**DATE:** February 3, 2014

**SUBJECT:** Ordinance to amend the City's zoning designation for property located in the vicinity of the intersection of Bulldog Road and Kittyhawk Way

**DISCUSSION:**

Attached is an ordinance to amend the City's zoning designation for the above described property. This is some of the same property involved in the agreements approved last week to delay the instillation of required infrastructure.

The Current zoning designation for this property is industrial and manufacturing – 2 (I&M 2). The objectives and characteristics of the I&M – 2 zone are to provide areas in the community where heavy industrial, manufacturing, and extractive uses may be located in an environment which protects them from the encroachment of commercial and residential uses, and which reduces the effect of undesirable characteristics such as odor, dust, and noise upon surrounding residential, commercial or light industrial areas. The I&M-2 zone should be located in areas which are readily accessible to railroads and major highway routes. Said zone shall also be located in areas which will insure the purity of air and waters within Cedar City and will not create hazards to nearby residential, commercial or light industrial areas as the result of noise, dust, fumes, or other disturbances. The I&M-2 zone will be characterized by the location of open and enclosed manufacturing, processing, extractive, and assembly uses which may potentially create hazards, nuisances, or disturbances. These uses will be located in areas which reduce the effects of these characteristics upon other areas of the community, and in an environment which is attractive but which recognizes the characteristics of the permitted uses. Some peripheral landscaping will be provided, where appropriate, to reduce the effects of the detrimental characteristics of permitted uses, and to enhance the appearance of the entire I&M-2 zone, see Cedar City Ordinance No. 26-III-19.

The proposed zoning designation for this property is Industrial and Manufacturing – I (I&M – I). The objectives and characteristics of the I&M – I zone are to establish a district in which the primary use of the land is manufacturing, fabricating, processing and warehousing establishments. This zone is characterized by flat, open land particularly suited for industrial uses because of the proximity to railroad tracks and streets and the availability of utilities necessary for successful industrial use. Representative of the uses within this zone are manufacturing and fabrication and processing, storage warehousing, and wholesale distribution and railroad trackage switch yards and terminal facilities. Uses which give rise to excessive noise, vibration, smoke, odor, dust, fumes, or danger of explosion have been excluded from this zone. Also subdivisions and dwellings on small lots along with other uses which tend to thwart or prevent the use of the land for its primary purposes have been excluded from this zone, see Cedar City Ordinance No. 26-III-18.

CEDAR CITY ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CEDAR CITY COUNCIL AMENDING CEDAR CITY'S ZONING DESIGNATION FROM INDUSTRIAL AND MANUFACTURING – 2 (I&M – 2) TO INDUSTRIAL AND MANUFACTURING – 1 (I&M – 1) ON PROPERTY LOCATED IN THE VICINITY OF THE INTERSECTION OF BULLDOG ROAD AND KITTYHAWK WAY.

**WHEREAS**, the owners of property located in the vicinity of the intersection of Bulldog Road and Kittyhawk Way have petitioned the City to change zoning designation from I&M – 2 to I&M – 1 the property involved in this petition is more particularly described as:

BEGINNING AT A POINT S 89°23'41" E ALONG THE 1/16 SECTION LINE 79.34 FEET FROM THE CENTER SOUTH 1/16 CORNER OF SECTION 3, T36S, R11W, SLB & M (SAID POINT BEING ON THE EAST R.O.W. LINE OF BULLDOG ROAD) AND RUNNING THENCE N 89°23'41" E 3.23 FEET; THENCE N 02°37'25" E ALONG THE EAST LINE OF BULLDOG ROAD 696.33 FEET; THENCE S 87°22'35" E 199.27 FEET; THENCE S 39°22'32" E 370.05; THENCE S 87°22'35" E 81.30 FEET TO THE WEST LINE OF INTERSTATE 15; THENCE ALONG SAID WEST LINE S 18°02'22"W 116.24 FEET; THENCE ALONG SAID WEST LINE S 14°04'37" W 221.27 FEET TO A CURVE TO THE LEFT, THENCE 453.25 FEET THROUGH A CENTRAL ANGLE OF 00°58'38" AND RADIUS OF 23038.32 FEET TO A POINT LOCATED S 15°01" W 0.57 FEET FROM A RIGHT OF WAY MARKER AT ENGINEERS STATION 935+30; THENCE N 79°13'04" W ALONG THE NORTH LINE OF BULLDOG ROAD 140.14 FEET; THENCE NORTHWESTERLY ALONG SAID LINE ALONG THE ARC OF A CURVE 322.360 FEET TO THE RIGHT (CHORD BEARS N 42°04'30" W 300.25 FEET) THROUGH A CENTRAL ANGLE OF 74°17'10" AND RADIUS OF 248.63 FEET; THENCE N 00°06'45" E 115.92 FEET TO THE POINT OF BEGINNING.

**WHEREAS**, after providing public notice as required by City ordinance the Cedar City Planning Commission considered the proposed amendment to the City's zoning ordinance and found that the amendment is reasonably necessary, is in the best interest of the public, and is in harmony with the objectives and purposes of Cedar City's zoning ordinance. The Planning Commission has given the proposed zone change a positive recommendation; and

**WHEREAS**, the City Council after duly publishing and holding a public hearing to consider the proposed zoning amendment finds the proposed amendment furthers the City's policy of establishing and maintaining sound, stable, and desirable development within the City, and promoting more fully the objectives and purposes of the City's zoning ordinance or to corrects manifest errors.

**NOW THEREFORE BE IT ORDAINED** by the City Council of Cedar City, State of Utah, that the City's zoning designation be amended so that the above described land is designated I&M – 1 and that City staff is hereby directed to make the necessary changes to the City's zoning map.

*Remainder of page intentionally left blank.*

This ordinance, Cedar City Ordinance No. \_\_\_\_\_, shall become effective immediately upon passage by the City Council, signed by the Mayor and Recorder and published in accordance with State Law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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MAILE L. WILSON  
MAYOR

[SEAL]  
ATTEST:

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RENON SAVAGE  
RECORDER

# CEDAR CITY PLANNING COMMISSION

## MINUTES

January 21, 2014

The Cedar City Planning Commission held a Meeting on Tuesday, January 21, 2014, at 5:15 p.m., in the Cedar City Council Chambers, 10 North Main, Cedar City, Utah.

Members in attendance: - Chairperson, Fred Rowley, Rich Gillette, Mike Mitchell, Vance Smith

Members absent: Kent Peterson-excused, Jill Peterson, Kristie McMullin

Staff in attendance: Larry Palmer, Kit Wareham, Paul Bittmenn, and Michal Adams

Others in attendance: Ron Larsen

Mike moved to appoint Rich G. the chair pro-tem, seconded by Fred and the vote was unanimous.

The meeting was called to order at: 5:20 p.m.

### ITEM/

### REQUESTED MOTION

### LOCATION/PROJECT

### APPLICANT/ PRESENTER

#### I. Regular Items

##### **1- Approval of Minutes (December 17, 2013)**

**(Approval)**

Mike moved to approve the minutes of December 17, 2013, seconded by Vance and the vote was unanimous.

##### **2- General Land Use Amend. East side of Bulldog Rd at (Recommendation) Kittyhawk to allow Business & Light Manufacturing**

**Jones/ InSite Eng.**

Ron L. showed the area, between the highway and Bulldog Road where Kittyhawk Drive comes in. The General Plan shows all north of that Kittyhawk line to be I&M-2 but they would like to make the area south of that all I&M-1 so the General Plan needs to be changed to show that also. It was asked if there were light manufacturing in the area. Ron pointed out that most all the area around this is only the I&M-1 not the heavy manufacturing of I&M-2. All to the south is business and light manufacturing and they would like to change that line to go around the one other parcel so it can be business and light manufacturing.

Fred pointed out then, that part of this piece is one zone, and part is another zone. Ron explained they have a better chance of selling this if this is changed. The I&M-2 is so limited in what you can do they are trying to make smaller lots to be more versatile. I&M-2 is mostly gravel pits and there would never be a need to have a gravel pit here. Also, the creek flows thru the middle of this piece.

It was wondered just how this would be split up. Ron explained that the minor lot that will come thru would create the separate lots. The Coal Creek Irrigation company would then swap the most southern piece for the one that the creek goes through. Then, everything north of the creek will stay heavy manufacturing, with the parcel south of the creek being changed to the

business and light manufacturing.

Fred wondered if those things west of this would be considered light manufacturing. Larry pointed out different businesses along there and most of that would fall into the light manufacturing. Fred said that making this also the light manufacturing then, would make more sense.

Vance wondered if this was all one parcel up until now. Ron said it is all owned by the irrigation company and the Jones. They will trade the south parcel for the creek parcel when it is subdivided.

Fred pointed out that there needs to be two recommendations, one for the land use change and one for the zone change.

Paul pointed out that not so many years ago, if there were no other light manufacturing in this area that would be considered a spot zone. That terminology is not used as much and when following a General Plan, if you change something in the middle, it is hard to defend. But if there is the same use in the same area, as in this case, as there is light manufacturing all around, it is easier to change.

Vance pointed out that the creek makes a natural boundary between the two uses. He was also curious as to why the owners wanted to make these changes. Ron said they want the smaller lots because of what they want to do their works much better in the I&M-1 zone. They just want to change the use below the creek to make these smaller lots.

**Vance moved to give favorable recommendations for both the land use change to be Business and Light Manufacturing and also the zone change from I&M-2 to I&M-1 on the same area to the City Council. Mike seconded and the vote was unanimous.**

**3- Zone Change  
I&M-2 to I&M-1  
(Recommendation)**

**East side of Bulldog Rd at Kittyhawk**

**Jones/InSite Eng.**

**Discussed and voted upon in Item #2.**

The meeting adjourned at 5:45 p.m.

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Michal Adams, Administrative Assistant

1/4 NE 1/4 & NW 1/4 SE 1/4 SEC 3, T36S, R11W, SLB & M  
CEDAR CITY, IRON COUNTY, UTAH

**ZONE CHANGE FOR:**

1/4 NE 1/4 & NW 1/4 SE 1/4 SEC 3  
CEDAR CITY, IRON COUNTY, UTAH

6957 1.00 (157) 10/1/53  
6958 1.00 (158) 10/1/53

CEDAR CITY, IRON COUNTY, UTAH

11

1

[illegible][illegible]

(18&amp;M-2)

(I&amp;M-1)

VICINETY PLAN

(R-3)

(A-3)

18&amp;M-2)

18M-2)

1-15

 $\{M=1\}$ 

44

117

10

11

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29

7

10

Source: *Journal of the American Statistical Association*, 1997, 92, 1037-1046.

1

**Journal of Management Education**

**CEDAR CITY COUNCIL**  
**AGENDA ITEM 5**  
**DECISION PAPER**

**TO:** Mayor and City Council

**FROM:** Darrell Olmsted

**DATE:** February 5, 2014

**SUBJECT:** Review of the Municipal Wastewater Planning Program.

**DISCUSSION:**

Each year Cedar City is required to complete and submit a self-assessment report to the Utah Department of Environmental Quality. The State uses this report to help determine the current operational effectiveness of wastewater facilities and to identify potential problems.

Cedar City is required to pass a resolution for the Municipal Wastewater Planning Program Self-Assessment Report. A copy of the report and the resolution are then sent to the State Water Quality Board for review.





# STATE OF UTAH

## *MUNICIPAL WASTEWATER PLANNING PROGRAM*

### SELF-ASSESSMENT REPORT

FOR

CEDAR CITY

2013





Resolution Number \_\_\_\_\_

**MUNICIPAL WASTEWATER PLANNING PROGRAM RESOLUTION**

RESOLVED that **CEDAR CITY** informs the Water Quality Board the following actions were taken by the **CITY COUNCIL**

1. Reviewed the attached Municipal Wastewater Planning Program Report for 2013.
2. Have taken all appropriate actions necessary to maintain effluent requirements contained in the UPDES Permit (If Applicable).

Passed by a (majority) (unanimous) vote on

\_\_\_\_\_  
(date)

\_\_\_\_\_  
Mayor/Chairman

\_\_\_\_\_  
Attest:

\_\_\_\_\_  
Recorder/Clerk



## **Municipal Wastewater Planning Program (MWPP) Financial Evaluation Section**

Owner Name: *CEDAR CITY*

Name and Title of Contact Person:

Darrell Olmsted

Wastewater Superintendent

Phone: 435-867-9426 x302

E-mail: odarrell@cedarcity.org

**PLEASE SUBMIT TO STATE BY: March 1, 2014**

Mail to: MWPP - Department of Environmental Quality  
c/o Paul Krauth, P.E.  
Division of Water Quality  
195 North 1950 West  
P.O. Box 144870  
Salt Lake City, Utah 84114-4870  
Phone : (801) 536-4346

*NOTE: This questionnaire has been compiled for your benefit by a state sponsored task force comprised of representatives of local government and service districts. It is designed to assist you in making an evaluation of your wastewater system and financial planning. Please answer questions as accurately as possible to give you the best evaluation of your facility. If you need assistance please call, Emily Cantón, Utah Division of Water Quality: (801) 536-4342.*

I. Definitions: The following terms and definitions may help you complete the worksheets and questionnaire:

**User Charge (UC)** - A fee established for one or more class(es) of users of the wastewater treatment facilities that generate revenues to pay for costs of the system.

**Operation and Maintenance Expense** - Expenditures incurred for materials, labor, utilities, and other items necessary for managing and maintaining the facility to achieve or maintain the capacity and performance for which it was designed and constructed.

**Repair and Replacement Cost** - Expenditures incurred during the useful life of the treatment works for obtaining and installing equipment, accessories, and/or appurtenances necessary to maintain the existing capacity and the performance for which the facility was designed and constructed.

**Capital Needs** - Cost to construct, upgrade or improve the facility.

**Capital Improvement Reserve Account** - A reserve established to accumulate funds for construction and/or replacement of treatment facilities, collection lines or other capital improvement needs.

**Reserve for Debt Service** - A reserve for bond repayment as may be defined in accordance with terms of a bond indenture.

**Current Debt Service** - Interest and principal costs for debt payable this year.

**Repair and Replacement Sinking Fund** - A fund to accumulate funds for repairs and maintenance to fixed assets not normally included in operation expenses and for replacement costs (defined above).

## Part I: OPERATION AND MAINTENANCE

Complete the following table:

Question	Points Earned	Total
Are revenues sufficient to cover operation, maintenance, and repair & replacement (OM&R) costs <u>at this time</u> ?	YES = 0 points NO = 25 points	0
Are the projected revenues sufficient to cover operation, maintenance, and repair & replacement (OM&R) costs for the <u>next five years</u> ?	YES = 0 points NO = 25 points	0
Does the facility have sufficient staff to ensure proper O&M?	YES = 0 points NO = 25 points	0
Has a dedicated sinking fund been established to provide for repair & replacement costs?	YES = 0 points NO = 25 points	0
Is the repair & replacement sinking fund adequate to meet anticipated needs?	YES = 0 points NO = 25 points	0
TOTAL PART I =		0

## Part II: CAPITAL IMPROVEMENTS

Complete the following table:

Question	Points Earned	Total
Are present revenues collected sufficient to cover all costs and provide funding for capital improvements?	YES = 0 points NO = 25 points	0
Are projected funding sources sufficient to cover all projected capital improvement costs for the <u>next five years</u> ?	YES = 0 points NO = 25 points	0
Are projected funding sources sufficient to cover all projected capital improvement costs for the <u>next ten years</u> ?	YES = 0 points NO = 25 points	0
Are projected funding sources sufficient to cover all projected capital improvement costs for the <u>next twenty years</u> ?	YES = 0 points NO = 25 points	0
Has a dedicated sinking fund been established to provide for future capital improvements?	YES = 0 points NO = 25 points	0
TOTAL PART II =		0

### Part III: GENERAL QUESTIONS

Complete the following table:

Question	Points Earned	Total
Is the wastewater treatment fund a separate enterprise fund/account or district?	YES = 0 points NO = 25 points	0
Are you collecting <b>95%</b> or more of your sewer billings?	YES = 0 points NO = 25 points	0
Is there a review, at least annually, of user fees?	YES = 0 points NO = 25 points	0
Are bond reserve requirements being met if applicable?	YES = 0 points NO = 25 points	0
<b>TOTAL PART III =</b>		<b>0</b>

### Part IV: PROJECTED NEEDS

Estimate as best you can the following:

Cost of projected capital improvements (in thousands)	2014	2015	2016	2017	2018
	10,000	0	0	0	0

### Point Summation

Fill in the values from Parts I through III in the blanks provided in column 1. Add the numbers to determine the MWPP point total that reflects your present financial position for meeting your wastewater needs.

Part	Points
I	0
II	0
III	0
Total	0



## **Municipal Wastewater Planning Program (MWPP) Collection System Section**

Owner Name: CEDAR CITY

Name and Title of Contact Person:

Darrell Olmsted

Wastewater Superintendent

Phone: 435-867-9426 x302

E-mail: odarrell@cedarcity.org

**PLEASE SUBMIT TO STATE BY: March 1, 2014**

Mail to: MWPP - Department of Environmental Quality  
c/o Paul Krauth, P.E.  
Division of Water Quality  
195 North 1950 West  
P.O. Box 144870  
Salt Lake City, Utah 84114-4870  
Phone : (801) 536-4346

Form completed by

Darrell Olmsted

## Part I: SYSTEM AGE

- A. What year was your collection system first constructed (approximately)?

Year 1945

- B. What is the oldest part of your present system?

Oldest part 69 years

## Part II: BYPASSES

- A. Please complete the following table:

Question	Number	Points Earned	Total Points
How many days last year was there a bypass, overflow or basement flooding by untreated wastewater in the system due to rain or snowmelt?	1	0 times = 0 points 1 time = 5 points 2 times = 10 points 3 times = 15 points 4 times = 20 points 5 or more = 25 points	5
How many days last year was there a bypass, overflow or basement flooding by untreated wastewater due to equipment failure? (except plugged laterals)	0	0 times = 0 points 1 time = 5 points 2 times = 10 points 3 times = 15 points 4 times = 20 points 5 or more = 25 points	0
TOTAL PART II =			5

- B. The Utah Sewer Management Program defines sanitary sewer overflows into two classes:

Number of Class 1 SSOs in Calendar year 2013 1

Number of Class 2 SSOs in Calendar year 2013 0

*Class 1* - a Significant SSO means a SSO or backup that is not caused by a private lateral obstruction or problem that:

- (a) effects more than five private structures;
- (b) affects one or more public, commercial or industrial structure(s);
- (c) may result in a public health risk to the general public;
- (d) has a spill volume that exceeds 5,000 gallons, excluding those in single private structures; or
- (e) discharges to Waters of the state.

*Class 2* - a Non-Significant SSO means a SSO or backup that is not caused by a private lateral obstruction or problem that does not meet the Class 1 SSO criteria.

**Part II: BYPASSES (cont.)**

- C. Please specify whether the bypass(es) was caused a contract or tributary communities, etc.

The Class 1 SSO was caused by a 500-year rain event.

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**Part III: NEW DEVELOPMENT**

- A. Please complete the following table:

Question	Points Earned	Total Points
Has an industry (or other development) moved into the community or expanded production in the past two years, such that either flow or wastewater loadings to the sewerage system were significantly increased (10 - 20%)?	No = 0 points Yes = 10 points	0
Are there any major new developments (industrial, commercial, or residential) anticipated in the next 2- 3 years, such that either flow or BOD <sub>5</sub> loadings to the sewerage system could significantly increase (25%)?	No = 0 points Yes = 10 points	0
<b>TOTAL PART III =</b>		0

- B. Approximate number of new residential sewer connections in the last year

126 new residential connections

- C. Approximate number of new commercial/industrial connections in the last year

6 new commercial/industrial connections

- D. Approximate number of new population serviced in the last year

403 new people served

#### Part IV: OPERATOR CERTIFICATION

A. How many collection system operators are currently employed by your facility?

4-1/2 collection system operators employed

B. What is/are the name(s) of your DRC operator(s)?

Darrell Olmsted

\_\_\_\_\_

\_\_\_\_\_

C. You are required to have the collection DRC operator(s) certified at **Grade III**

What is the current grade of the DRC operator(s)? IV

D. State of Utah Administrative Rules require all operators considered to be in DRC to be appropriately certified. List all the operators in your system by their certification class.

Not Certified 1

Small Lagoons \_\_\_\_\_

Collection I 1

Collection II 1

Collection III \_\_\_\_\_

Collection IV 2

E. Please complete the following table:

Question	Points Earned	Total Points
Is/are your DRC operator(s) currently certified at the appropriate grade for this facility? (see C)	Yes = 0 points No = 50 points	0
How many continuing education units has each of the DRC operator(s) completed over the last 3 years?	3 or more = 0 points less than 3 = 10 points	0
TOTAL PART IV =		0

## Part V: FACILITY MAINTENANCE

A. Please complete the following table:

Question	Points Earned	Total Points
Do you follow an annual preventative maintenance program?	Yes = 0 points No = 30 points	0
Is it written?	Yes = 0 points No = 20 points	0
Do you have a written emergency response plan?	Yes = 0 points No = 20 points	0
Do you have an updated operations and maintenance manual	Yes = 0 points No = 20 points	20
Do you have a written safety plan?	Yes = 0 points No = 20 points	0
<b>TOTAL PART V =</b>		<b>20</b>

## Part VI: SUBJECTIVE EVALUATION

*This section should be with the system operators.*

A. Has your system completed it's the Utah Sewer Management Program.

Yes \_\_\_\_\_ NO   X  

B. Describe the physical condition of the sewer collection system: (lift stations, etc. included)

The sewer system is in fair to excellent condition. The older parts of the sewer are in fair condition and the newer parts of the sewer system are in excellent condition.

\_\_\_\_\_

\_\_\_\_\_

C. What sewerage system improvements does the community have under consideration for the next 10 years?

Repair or replace a damaged 18-inch sewer main on Airport Road.

The City has an on-going manhole rehabilitation program.

The City up-sizes sewer lines as needed to handle growth.

\_\_\_\_\_

\_\_\_\_\_

Part VI: SUBJECTIVE EVALUATION (cont.)

- D. Explain what problems, other than plugging have you experienced over the last year  
The city had a sewer backup into a commerical business due to line overloading during  
a significant rain event.

- E. Is your community presently involved in formal planning for system expansion/upgrading? If so explain.  
No. The city is not presently involved in a formal planning for a system expansion or upgrade.

- F. Has your system completed it's *System Evaluation and Capacity Assurance Plan*  
As defined by the Utah Sewer Management Program.

Yes \_\_\_\_\_ NO X \_\_\_\_\_

- G. Does the municipality/district pay for the continuing education expenses of operators?

ALWAYS X \_\_\_\_\_ SOMETIMES \_\_\_\_\_ NO \_\_\_\_\_

If they do, what percentage is paid?

approximately 100 %

- H. Is there a written policy regarding continuing education and training for wastewater operators?

YES \_\_\_\_\_ NO X \_\_\_\_\_

## Part VI: SUBJECTIVE EVALUATION (cont.)

1. Any additional comments? (Attach additional sheets if necessary.)

Funding has been approved for the repair or replacement of the sewer line that experienced an overload condition due to a significant rain event.

## POINT SUMMATION

Fill in the values from Parts II through V in the blanks provided in column 1. Add the numbers to determine the MWPP point total that your wastewater facility has generated for the past twelve months.

Part	Points
II	5
III	0
IV	0
V	20
Total	25



# **Municipal Wastewater Planning Program (MWPP) Mechanical Plant Section**

Owner Name: *CEDAR CITY*

Name and Title of Contact Person:

Darrell Olmsted

Wastewater Superintendent

Phone: 435-867-9426 x302

E-mail: odarrell@cedarcity.org

**PLEASE SUBMIT TO STATE BY: March 1, 2014**

Mail to: MWPP - Department of Environmental Quality  
c/o Paul Krauth, P.E.  
Division of Water Quality  
195 North 1950 West  
P.O. Box 144870  
Salt Lake City, Utah 84114-4870  
Phone : (801) 536-4346

Form completed by

Darrell Olmsted

## Part I: INFLUENT INFORMATION

- A. Please update (if needed) the average design flow and average design BOD<sub>5</sub> and TSS loading for your facility.

	Average Design Flow (MGD)	Average Design BOD <sub>5</sub> Loading (lbs/day)	Average Design TSS Loading (lbs/day)
Design Criteria	4.4	9,615	9,284
90% of the Design Criteria	3.96	8,654	8,356

- B. Please list the average monthly flows in millions of gallons per day (MGD) and BOD<sub>5</sub> and TSS loadings in milligrams per liter (mg/L) **received** at your facility during 2013. (Calculate the BOD<sub>5</sub> and TSS loadings in pounds per day (lbs/day).

Month	(1) Average Monthly Flow (MGD)	(2) Average Monthly BOD <sub>5</sub> Concentration (mg/L)	(3) Average BOD <sub>5</sub> Loading (lbs/day) <sup>1</sup>	(4) Average Monthly TSS Concentration (mg/L)	(5) Average TSS Loading (lbs/day) <sup>2</sup>
January	2.5	252	5,254	229	4,775
February	2.5	244	5,087	242	5,046
March	2.3	238	4,565	256	4,911
April	2.3	232	4,450	243	4,661
May	2.3	230	4,412	276	5,294
June	2.3	348	6,675	414	7,941
July	2.4	354	7,086	331	6,625
August	2.5	279	5,817	329	6,860
September	2.6	257	5,573	276	5,985
October	2.6	594	6,375	232	5,031
November	2.5	250	5,213	244	5,087
December	2.5	289	5,303	243	4,459
Average	2.4	272	5,487	276	5,568

<sup>1</sup> BOD<sub>5</sub> Loading (3) = Average Monthly Flow (1) x Average Monthly BOD<sub>5</sub> Concentration (2) x 8.34

<sup>2</sup> TSS Loading (5) = Average Monthly Flow (1) x Average Monthly TSS Concentration (4) x 8.34

### Part I. INFLUENT INFORMATION (cont.)

- C. Refer to the information in A & B to determine a point value for your facility. Please enter the points for each question in the blank provided.

Question	Number	Points Earned	Total Points
How many times did the average monthly flow (Part B., Column 1) to the wastewater facility exceed 90% of design flow?	0	0 = 0 points 1 - 2 = 10 points 3 - 4 = 20 points 5 or more = 30 points	0
How many times did the average monthly flow (Part B., Column 1) to the wastewater facility exceed the design flow?	0	0 = 0 points 1 - 2 = 20 points 3 - 4 = 40 points 5 or more = 60 points	0
How many times did the average monthly BOD <sub>5</sub> loading (Part B., Column 3) to the wastewater facility exceed 90% of the design loading?	0	0-1 = 0 points 1 - 2 = 10 points 3 - 4 = 20 points 5 or more = 30 points	0
How many times did the average monthly BOD <sub>5</sub> loading (Part B., Column 3) to the wastewater facility exceed the design loading?	0	0 = 0 points 1 - 2 = 20 points 3 - 5 = 40 points 5 or more = 60 points	0
<b>TOTAL PART I =</b>			0

## Part II: EFFLUENT INFORMATION

- A. Please list the average monthly BOD<sub>5</sub>, TSS, Ammonia (NH<sub>3</sub>), monthly maximum Cl<sub>2</sub>, minimum monthly DO, and 30-day geometric averages for Fecal and Total Coliform, or E-Coli produced by your facility during 2013.

Month	(1) BOD <sub>5</sub> (mg/L)	(2) TSS (mg/L)	(3) Fecal Coliform (#/100 mL)	(4) Total Coliform (#/100 mL)	(5) E-Coli	(6) Cl <sub>2</sub> (mg/L)	(7) DO (mg/L)	(8) NH <sub>3</sub> (mg/L)
	Whole Numbers Only					One Decimal Place Only		
January	13	13		6	1	2.6		1.6
February	16	16		18	1	2.4		
March	12	12		9	1	2.2		
April	12	12		5	1	2.1		5.1
May	12	14		5	1	2.9		
June	13	19		40	1	2.3		
July	13	20		122	2	2.7		1.5
August	23	16		44	2	2.2		
September	13	12		13	1	2.6		
October	14	17		32	1	2.3		2.7
November	23	19		20	1	3.0		
December	18	14		21	1	3.2		
Average	15	15		28	1	2.5		2.7

- B. Please list the monthly average permit limits for the facility in the blanks below.

	BOD <sub>5</sub> (CBOD <sub>5</sub> ) (mg/L)	maximum Cl <sub>2</sub> (mg/L)	NH <sub>3</sub> (mg/L)	minimum DO (mg/L)
Monthly Permit Limit	25	N/A	N/A	N/A
80% of the Permit Limit	20	N/A	N/A	N/A

**Part II: EFFLUENT INFORMATION (cont.)**

- C. Refer to the information in A & B and your operating reports to determine a point values for your facility.

Question	Number	Points Earned	Total Points
How many months did the effluent BOD <sub>5</sub> (CBOD <sub>5</sub> ) exceed 80% of monthly permit limit?	2	0 - 1 = 0 points 2 = 5 points 3 = 10 points 4 = 15 points 5 or more = 20 points	5
How many months did the effluent BOD <sub>5</sub> (CBOD <sub>5</sub> ) exceed the monthly permit limits?	0	0 = 0 points 1 - 2 = 10 points 3 or more = 20 points	0
How many months did the effluent TSS exceed 20 mg/L?	0	0 - 1 = 0 points 2 = 5 points 3 = 10 points 4 = 15 points 5 or more = 20 points	0
How many months did the effluent TSS exceed 25 mg/L?	0	0 = 0 points 1 - 2 = 10 points 3 or more = 20 points	0
How many times did the C <sub>b</sub> exceed permit limit?	N/A	0 = 0 points 1 - 2 = 15 points 3 or more = 30 points	---
How many times did the NH <sub>3</sub> exceed permit limits?	N/A	0 = 0 points 1 - 2 = 15 points 3 or more = 30 points	---
How many times did the DO not meet permit limit?	N/A	0 = 0 points 1 - 2 = 15 points 3 or more = 30 points	---
How many months did the 30-day fecal coliform exceed 200 #/100 mL?	N/A	0 = 0 points 1 - 2 = 10 points 3 or more = 20 points	---
How many months did the 30-day total coliform exceed 2,000 #/100 mL?	0	0 = 0 points 1 - 2 = 10 points 3 or more = 20 points	0
How many months did the 30-day E-coli exceed 126 #/100 mL?	0	0 = 0 points 1 - 2 = 20 points 3 or more = 40 points	0
<b>TOTAL PART II =</b>			5

### Part III: FACILITY AGE

In what year were the following process units constructed or underwent a major upgrade?  
To determine a point score subtract the construction or upgrade year from 2013.

Points = Age = Present Year - Construction or Upgrade Year.

Enter the calculated age below.

If the point total exceeds 20 points, enter only 20 points.

Unit Process	Current Year	Construction or Last Upgrade Year	Age = Points
Headworks	2013	1996	17
Primary Treatment	2013	1996	17
Secondary Treatment	2013	1996	17
Solids Handling	2013	1996	17
Disinfection	2013	1996	17
TOTAL PART III (not greater than 20) =			20

### Part IV: BYPASSES

Please complete the following table:

Question	Number	Points Earned	Total Points
How many days in the past year was there a bypass or overflow of untreated wastewater due to high flows?	0	0 = 0 points 1 = 5 points 2 = 10 points 3 = 15 points 4 = 20 points 5 or more = 25 points	0
How many days in the last year was there a bypass or overflow of untreated wastewater due to equipment failure?	0	0 = 0 points 1 = 5 points 2 = 10 points 3 = 15 points 4 = 20 points 5 or more = 25 points	0
TOTAL PART IV =			0

## Part V: SOLIDS HANDLING

A. Please complete the following table:

Current Disposal Method (check all that apply)	Points Earned	Total Points
Landfill	Class B = 0 points < Class B = 50 points	0
Land Application	Site Life 0 - 5 years = 20 points 5 - 10 years = 10 points 10+ years = 0 points	0
Give Away/Distribution and Marketing	Class A = 10 points Class B = 20 points	10
TOTAL PART V =		10

## Part VI: NEW DEVELOPMENT

A. Please complete the following table:

Question	Points Earned	Total Points
Has an industry (or other development) moved into the community or expanded production in the past two years, such that either flow or wastewater loadings to the sewerage system were significantly increased (10 - 20%)?	No = 0 points Yes = 10 points	0
Are there any major new developments (industrial, commercial, or residential) anticipated in the next 2-3 years, such that either flow or BOD <sub>5</sub> loadings to the sewerage system could significantly increase (25%)?	No = 0 points Yes = 10 points	0
Have you experienced any upset due to septage haulers?	No = 0 points Yes = 10 points	0
TOTAL PART VI =		0

**Part VI: NEW DEVELOPMENT (cont.)**

- B. Approximate number of new residential sewer connections in the last year  
126 new residential connections
- C. Approximate number of new commercial/industrial connections in the last year  
6 new commercial/industrial connections
- D. Approximate number of new population serviced in the last year  
403 new people served

**Part VII: OPERATOR CERTIFICATION**

- A. How many operators are currently employed by your facility?  
4-1/2 operator(s) employed
- B. What is/are the name(s) of your DRC operator(s)?  
Darrell Olmsted  
Eric Bonzo
- C. You are required to have the treatment DRC operator(s) certified at GRADE III.  
What is the current grade of the DRC operator(s)? IV
- D. State of Utah Administrative Rules Require that all operators considered to be in DRC to be appropriately certified. List all the operators in your system by their certification class.

Not Certified	<u></u>
Treatment I	<u>1</u>
Treatment II	<u>2</u>
Treatment III	<u></u>
Treatment IV	<u>2</u>



**Part VII: OPERATOR CERTIFICATION (cont.)**

E. Please complete the following table:

Question	Points Earned	Total Points
Is/are your DRC operator(s) currently certified at the appropriate grade for this facility? (see C)	Yes = 0 points No = 50 points	0
How many continuing education units has each of the DRC operator(s) completed over the last 3 years?	3 or more = 0 points less than 3 = 10 points	0
<b>TOTAL PART VII =</b>		0

**Part VIII: FACILITY MAINTENANCE**

A. Please complete the following table:

Question	Points Earned	Total Points
Do you follow an annual preventative maintenance program?	Yes = 0 points No = 30 points	0
Is it written?	Yes = 0 points No = 20 points	0
Do you have a written emergency response plan?	Yes = 0 points No = 20 points	0
Do you have an updated operations and maintenance manual	Yes = 0 points No = 20 points	20
Do you have a written safety plan?	Yes = 0 points No = 20 points	0
<b>TOTAL PART VIII =</b>		20

Part IX: SUBJECTIVE EVALUATION

*This section should be completed with the facility operators.*

- A. Do you consider your wastewater facility to be in good physical and structural condition?

YES   X   NO           

If NOT, why?

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- B. What improvements do you think the plant will need in the next 5 years?

Nitrogen removal capabilities.

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- C. Where there any backups into basements at any point in the collection system in 2013.

YES            NO   X  

Why? (do not include backups due to clogged laterals)

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- D. Does the municipality/district pay for the continuing education expenses of operators?

ALWAYS   X   SOMETIMES            NO           

If so, what percentage do they pay?

approximately   100   %

## Part IX: SUBJECTIVE EVALUATION (cont.)

- E. Is there a written policy regarding continuing education and training for wastewater operators?

YES \_\_\_\_\_ NO X

- F. Have you done any major repairs or mechanical equipment replacement in 2009?  
(do not include construction or upgrade projects)

YES \_\_\_\_\_ NO   X  

- G. What was the approximate cost for those repairs or replacements?

\$ \_\_\_\_\_

- H. Any additional comments? (Attach additional sheets if necessary.)

The plant has begun construction of elimination the trickling filter process for an MLE bioreactor oxidation process. Construction is expected to be completed in 2015.

## POINT SUMMATION

Fill in the values from Parts I through VIII in the blanks provided in column 1. Add the numbers to determine the MWPP point total that your wastewater facility has generated for the past twelve months.

Part	Points
I	0
II	5
III	20
IV	0
V	10
VI	0
VII	0
VIII	20
Total	55

**CEDAR CITY COUNCIL**

**AGENDA ITEM**   6  

**INFORMATION SHEET**

**TO:** Mayor and City Council  
**FROM:** Ryan Marshall and Tammy Nay  
**DATE:** February 5, 2014  
**SUBJECT:** Consider Grant Contract for UDOT Funds from FY 2012

**DISCUSSION:** A portion of Cedar Area Transportation Service (CATS) operation is dependent upon funding in the form of grants from the federal government and dispersed through UDOT. Our contract for funding has been awarded by UDOT in the amount of \$84,000.00 from fiscal year 2012 funds to be used this year.

Please authorize the Mayor to sign three copies of this contract so that UDOT can release funds for CATS to continue operations this year.

Attached for your review is the State of Utah Contract cover page.



# STATE OF UTAH CONTRACT

FTA SECTION: 5311 Formula  
Grants for Rural Areas  
FEDERAL FISCAL YEAR: 2012



CONTRACT NUMBER \_\_\_\_\_

EFFECTIVE DATE \_\_\_\_\_

TRACKING NUMBER \_\_\_\_\_

- CONTRACTING PARTIES:** This contract is between the Utah Department of Transportation (hereinafter referred to as "Department") and,  
REMITTANCE ADDRESS:  
Cedar City Corporation  
10 North Main  
Cedar City, Utah 84720  
  
(herein after referred to as "Contractor").  
  
**Legal Status:** Local Government  
**Fed ID No:** 87-60000215  
**DUNS No:** 073013153  
**Award Year:** 2014  
**CFDA No:** 20.509
- CONTRACT PERIOD:** The Contractor shall commence, carry on and complete the Project with all practicable dispatch, in a sound, economical and efficient manner. Project shall be complete when compliance to Federal regulations has been met and scope of work has been completed.
- CONTRACT AWARD:** The Contractor will be awarded a maximum of \$84,000.00 for the costs authorized by this contract as further described in Exhibit A.

The parties below hereto agree to abide by all the provisions of this contract. IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

Duly Authorized Representative of **Contractor:**

**Department:**

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

NAME Maile Wilson

TITLE Mayor

DIRECTOR OF TRANSIT PLANS AND PROGRAMS \_\_\_\_\_ DATE \_\_\_\_\_

CONTRACT ADMINISTRATOR \_\_\_\_\_ DATE \_\_\_\_\_

SYSTEMS PLANNING AND PROGRAMMING DIRECTOR \_\_\_\_\_ DATE \_\_\_\_\_

Approved by the Assistant Attorney General on 05/17/2012.

	FOR UDOT USE ONLY			
	DEPARTMENT CONTACT	CONTRACTOR CONTACT	CONTRACTOR PHONE	CONTRACTOR EMAIL

ALI	GRANT NUMBER	FINET/PROGRAM	PHASE	FEDERAL AMOUNT
11.12.15	UT-18-X031	4UT08	21H	40,000
30.09.01	UT-18-X031	4UT08	12H	25,000
11.79.00	UT-18-X031	4UT08	15H	19,000
			TOTAL	84,000

**UTAH DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION, 49 U.S.C. Section 5311  
NONURBANIZED AREA FORMULA PROGRAM  
INTERAGENCY CONTRACT AGREEMENT**

WHEREAS, 49 U.S.C. §5311 as amended by SAFETEA-LU and subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5311 note, and the Federal Transit Administration Act of 1964, as amended, provide for capital, operating and project administration grants to governmental authorities, non-profit organizations and operators of public transportation services for public transportation in non-urbanized areas; and

WHEREAS, the Governor of the State of Utah, in accordance with the Federal Transit Administration (hereinafter referred to as "FTA"), has designated the Department to evaluate and select projects proposed by the Contractor and to coordinate the grant applications; and

WHEREAS, the State and the Contractor desire to secure and utilize grant funds for the transportation needs of the citizens in non-urbanized areas of the State of Utah;

NOW THEREFORE, in consideration of the mutual covenants herein set forth, the State and the Contractor agree as follows:

Section 1     Purpose of Agreement     The purpose of this Agreement is to provide for the undertaking of transportation services to the general public (hereinafter referred to as "Project") by the Contractor and to state the terms, conditions and mutual understandings of the parties as to the manner in which the Project will be undertaken and completed.

Section 2     Scope of Project     The Contractor shall undertake and complete the Project as described in the attached Exhibit A, filed with and approved by the Department and FTA, and in accordance with the terms and conditions of this Contract.

Section 3     Contractor's Capacity     The Contractor agrees to maintain or acquire sufficient legal, financial, technical and managerial capacity to (1) plan, manage, and complete the Project, and provide for the use of Project property; (2) plan and carry out safety and security aspects of the project and (3) comply with the terms of the Approved Project Budget, the Project schedules, and all applicable Federal laws, executive orders, regulations, directives, and published policies governing this Project. The most current FTA Master Agreement is hereby incorporated by reference and made part of this Agreement. The Contractor is an independent contractor with the Department. This Agreement does not create any type of agency relationship, joint venture, or partnership between the Contractor and the Department. Any periodic plan and specification review, construction inspection, or compliance oversight performed by the Department arising out of the performance of this agreement does not relieve the Contractor of its duty in the performance of this agreement or ensure compliance with acceptable standards.

Section 4     Cost of Project     The cost of the Project shall be in the amount indicated in the attached Project description and budget(s) and shall be borne in the manner described therein. The Contractor agrees that it will provide funds in the amount sufficient, together with the Grant, to assure payment of the actual Project cost. The Contractor shall initiate and prosecute to completion all actions necessary to enable the Contractor to provide its share of the Project costs at or prior to the time that such funds are needed to meet Project costs. The Contractor further agrees that no refund or reduction of the amount so provided will be made at



the same time, unless there is at the same time a refund to the State of a proportional amount of the Grant. The Contractor agrees that "Project Costs" eligible for federal participation must comply with the standards of OMB Circular A-87, Revised, "Cost Principles for State and Local Governments," or OMB Circular A-122 Revised, "Cost Principles for Non-Profit Organizations," whichever is appropriate. Submit contractor's budget and source and amounts of local share as indicated in Exhibit B. If the contractor plans to request reimbursement for indirect costs, a cost allocation plan must be submitted to the Department prior to incurring any costs. Prior to submission, the cost allocation plan must be approved by the cognizant Federal agency and updated annually for it to be acceptable. If no plan is submitted which meets these requirements, indirect costs are not allowed.

**Section 5     Procurement**     The Contractor agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53 and Federal laws in effect now or subsequently enacted; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18 or 49 C.F.R. § 19, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Contractor also agrees to follow the provisions of the most recent edition and revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," except to the extent FTA determines otherwise in writing, and UDOT's PTT Procurement Guide. The Contractor agrees that it may not use FTA assistance to support its third party procurements unless its compliance with Federal laws and regulations is satisfactory.

- (a)     **Purchase of Project Equipment**     The purchase of all project equipment financed in whole or in part pursuant to this Agreement shall be undertaken by the Department on behalf of the Contractor, or by the Contractor in accordance with the procedures set forth by the Office of Management & Budget in Title 49 CFR, Part 18, Section 18.36, 49 CFR Part 19, 49 CFR Parts 567, 661, 663, 665, and FTA Circular 4220. 1F; Third Party Contracting Guidelines. Equipment purchased under this contract shall be identified on Exhibit B at the time of delivery and will constitute as the legal description of the equipment purchased under this contract. See attachment F.

**Section 6     Use of Project Property**     Use of project property must be in compliance with the Utah Department of Transportation State Management Plan. The Contractor agrees that the project equipment and other property shall be used for the provision of transportation service within the area described in Exhibit A for the duration of its useful life. If, during such period, any project property is not used in this manner or is withdrawn from transportation service, the Contractor shall immediately notify the Department and shall dispose of such project property in accordance with procedures as referenced in the current FTA Master Agreement and the Utah Department of Transportation State Management Plan.

The Contractor shall keep satisfactory records with regard to the use of property and submit to the Department, upon request, such information as is required in order to assure compliance with this Section and shall immediately notify the Department in all cases where project property is used in a manner substantially different from that described in the Project Scope. The Contractor shall maintain in amount and form satisfactory to the Department such insurance or self- insurance as will be adequate to protect project property throughout the period of required use.

During the period of contract performance, the Contractor shall maintain the project property at a high level of cleanliness, safety and mechanical soundness. The Utah Department

of Transportation State Management Plan requires the Contractor to have and implement a written project property maintenance plan. The Department and FTA shall have the right to conduct periodic inspections for the purpose of confirming proper maintenance pursuant to this Section.

The Department reserves the right to require the Contractor to restore project property or pay for damage to project property as a result of abuse or misuse of such property with the Contractor's knowledge and consent.

Section 7 Contracts Under This Agreement Unless otherwise authorized in writing by the Department, the Contractor shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of the Department. All contracts must include all the same terms and conditions and provisions included in this Agreement. However, the Contractor is responsible for ensuring that all work performed by subcontractor is insured under their insurance policy, or they require that the subcontractors meet the insurance provisions required under this Agreement.

Section 8 Contract Changes Any proposed change in this contract shall be submitted to the Department for its prior approval.

Section 9 Interest of Members of or Delegates to Congress No member or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising there from.

Section 10 Prohibited Interest No member, officer or employee of the Contractor during their tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

#### Section 11 Motor Vehicle Safety and Pollution

- (1) Federal Motor Vehicle Safety Standards. The Contractor will comply with the requirements of Federal Motor Vehicle Safety Standards.
- (2) Commercial Driver License (CDL) Requirement. The Contractor shall require all persons operating project vehicle(s) to adhere to all safety rules set forth by the State which shall include, but not be limited to, proper commercial driver licensing, as required by State/Federal Law.

Section 12 Licensing The Contractor shall comply with State Motor Vehicle Regulations in properly licensing all vehicles purchased under this contract. If vehicles are found to be licensed, registered, or titled improperly, all costs to conform to the State Motor Vehicle Regulations shall be borne by the Contractor.

Section 13 Insurance The Contractor shall comply with all applicable motor vehicle laws, and will secure a certificate of insurance covering each Project motor vehicle which shall demonstrate that the Contractor has obtained all insurance required by State law and, when applicable, Federal law. The Contractor will obtain the minimum specified coverage in the following:

1. Bodily Injury Liability – Minimum specified by State and Federal law, whichever is greater.
2. Property Damage Liability – Minimum specified by State and Federal law, whichever is greater.
3. Collision – An amount equal to at least 100 percent of the property value during the period of coverage or minimum specified by State and Federal law, whichever is greater.
4. Comprehensive – An amount equal to at least 100 percent of the property value during the period of coverage or minimum specified by State and Federal law, whichever is greater.
5. Uninsured Motorist – An amount equal to at least 100 percent of the property value during the period of coverage or minimum specified by State and Federal law, whichever is greater.
6. No Fault – Minimum specified by State and Federal law, whichever is greater.
7. Flood Hazards – Contractor agrees to comply with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. Part 4012a(a), with respect to any Project activity involving construction or an acquisition having an insurable cost of \$10,000 or more. Insurance coverage should be for an amount equal to at least 100 percent of the property value during the period of coverage or minimum specified by State and Federal law, whichever is greater.

This insurance will continue uninterrupted throughout the period of required use. For facilities and other non-vehicle property, the Contractor will obtain insurance coverage for an amount equal to at least 100 percent of the property value during the period of coverage or minimum specified by State and Federal law, whichever is greater. Property shall be insured against theft, vandalism, fire, earthquake, flood, and wind.

Contractors must be aware of Federal Motor Carrier Safety Regulations (FMCSR) and are required to comply with these regulations if applicable. Unless covered by an exception, vehicles with a GVWR over 10,000 pounds or which carry more than 15 passengers, including the driver, are required to meet FMCSR. These regulations include specific insurance requirements and the more stringent shall be followed in case of conflicting coverage limits.

Section 14 State Lien In order to protect the State's interest and establish its right to claim property in the event of a bankruptcy or other creditor action against the Contractor, a security interest lien on all equipment, vehicles, project property, etc., purchased under this contract shall be obtained and properly recorded, showing the Department as the secured party. Property titles shall show the Utah Department of Transportation as First Lien Holder. In the event of inadvertent receipt of property title, the Contractor shall voluntarily return said title to the Department for proper lien processing.

Section 15 Written Transactions The Contractor agrees to refrain from executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, grant anticipation note, alienation, or other obligation that in any way would affect the Federal interest in any project real property or equipment.

Section 16 Indemnity The Contractor agrees to hold harmless and indemnify the Department, its officers, employees and agents ("Indemnitees") from and against all claims, suits, and costs including attorneys' fees for injury or damages of any kind, arising out of

Company's negligent acts, errors or omissions in the performance of this contract, and from and against all claims, suits and costs including attorney's fees for injury or damage of any kind, arising out of Indemnities failure to inspect, discover, correct or otherwise address any defect, dangerous condition or other condition created by or resulting from the contractor's negligent acts, errors or omissions in the performance by the contractor or their subs at any tier within the scope of responsibilities of the contractor under this contract.

**Section 17 Federal, State, and Local Law Disclaimer** The provisions of this contract shall be governed by the laws of the State of Utah. Venue for any legal proceeding regarding this contract shall be in Salt Lake County, State of Utah. The Contractor and those engaged by the Contractor shall comply with all Federal, State, and local laws, regulations and other legally binding requirements that pertain to services provided under this contract.

**Section 18 Sub-Contractors** The Contractor shall include in all third party contracts and subcontracts entered into pursuant to this Agreement all of the above-required clauses and clauses required by Exhibit C. In addition, the following provision shall be included in any advertisement or invitation to bid for any procurement under this Agreement:

**Section 19 Statement of Financial Assistance** This contract is subject to a financial assistance contract between the State and the U.S. Department of Transportation.

**Section 20 Legal Notification** The Contractor shall attach the following statement to the deed/title of the property purchased or constructed under this contract to constitute legal notification:  
This vehicle/property was purchased in part with Federal funds from the Federal Transit Administration.

**Section 21 Project Changes** Occasionally, during the course of this Project, it may become necessary to effect certain changes and/or modifications in the original application statements. All such changes in budget, time, personnel, objective and scope shall be justified by the Contractor and forwarded to the Department for approval.

Any extension in the scope of services required or increases in cost will require a fully executed supplemental agreement. The supplemental agreement will establish the extent of changes, extensions, modifications and the compensation therefore.

**Section 22 Severability** If any provision or part of a provision of this Agreement is held to be unconstitutional, invalid, illegal, or unenforceable by a court of competent jurisdiction or as a result of any legislative action, such holding or action shall be strictly construed. Furthermore, provided the parties are still able to retain all of the material benefits of their bargain hereunder, such provision shall be construed, limited, or if necessary, severed, but only to the extent necessary to eliminate such invalidity or unenforceability, and the other provisions of this Agreement shall remain unaffected and this Agreement shall be construed and enforced as if such provision in its original form and content had never comprised a part thereof.

**Section 23 Status Verification System** State law mandates that any Contractor physically performing services provided under this Agreement must register and participate in the Status Verification System to verify the work eligibility status of the contractor's new employees.

Section 24 No Third Party Beneficiaries The parties enter in to this contract for the sole benefit of the parties, in exclusion of any third party, and no third party beneficiary is intended or created by the execution of this contract. The Department and the Contractor each represent that the execution of the contract and the performance required under the contract are within their respective duly authorized powers.

Section 25 Changes in Project Performance The Contractor agrees to notify the Department immediately, in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may adversely affect the Contractor's ability to perform the Project in accordance with the terms of the Agreement for the Project and the most current FTA Master Agreement. The Contractor also agrees to notify the Department immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect the Department's or the Federal Government's interests in the Project.

Section 26 Trafficking in Persons To the extent applicable, the Contractor agrees to comply with, and assures the compliance of each third party contractor and subcontractor with, the requirements of the subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and the provisions of Subsection 3.g of the FTA Master Agreement consistent with U.S. OMB guidance, "Trafficking in Persons: Grants and Cooperative Agreements," 2 C.F.R. Part 175.

Section 27 Geographic Information and Related Spatial Data The Contractor agrees to implement the Project in accordance with of U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19, 2002, so that any Project activities involving spatial data or geographic information systems activities financed directly or indirectly, in whole or in part, with Federal assistance, are or will be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Section 28 Planning and Private Enterprise

- (1) General The Contractor agrees to implement the Project in accordance with the following Federal planning and private enterprise provisions:
  - (a) 49 U.S.C. §§ 5303, 5304, 5306, and 5323(a)(1);
  - (b) Joint FHWA/FTA regulations, "Statewide Transportation Planning; Metropolitan Transportation Planning," 23 C.F.R. Part 450 and 49 C.F.R. Part 613 and any amendments thereto.
- (2) Governmental and Private Nonprofit Providers of Nonemergency Transportation In addition to providing opportunities to participate in planning described in Subsection 26.1 of this Agreement, to the extent feasible, the Contractor agrees to comply with 49 U.S.C. § 5323(k), which affords governmental agencies and nonprofit organizations that receive Federal assistance for nonemergency transportation from Federal Government sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services.
- (3) Infrastructure Investment During the implementation of the Project, the Contractor agrees to take into consideration the recommendations of Executive Order No. 12803,

"Infrastructure Privatization," 31 U.S.C. § 501 note, and Executive Order No. 12893, "Principles for Federal Infrastructure Investments," 31 U.S.C. § 501 note.

Section 29    Relocation    When relocation of individuals or businesses is required, the Contractor agrees as follows:

- (1)    Relocation Protections    The Contractor agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 et seq., and implementing U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, which provide for fair and equitable treatment of persons displaced as a result of a Federal or federally assisted program. These requirements apply to relocation in connection with all interests in real property acquired for Project purposes irrespective of Federal participation in the costs of that real property.
- (1)    Nondiscrimination in Housing    In carrying out its responsibilities to provide housing that may be required to comply with Federal relocation requirements for individuals, the Contractor agrees to comply with Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. §§ 3601 et seq., and follow Executive Order No. 12892, "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing," 42 U.S.C. § 3608 note, except to the extent the Federal Government determines otherwise in writing.
- (3)    Prohibition Against Use of Lead-Based Paint    In undertaking construction or rehabilitation of residential structures on behalf of individuals affected by real property acquisition in connection with the Project, the Contractor agrees that it will not use lead-based paint, consistent with the prohibitions of section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b), and implementing U.S. Housing and Urban Development regulations, "Lead-based Paint Poisoning Prevention in Certain Residential Structures," 24 C.F.R. Part 35.

Section 30    Real Property    For real property acquired with Federal assistance, the Contractor agrees as follows:

- (1)    Land Acquisition    The Contractor agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 et seq., and implementing U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, which provide for fair and equitable treatment of persons whose property is acquired as a result of a Federal or federally assisted program. These requirements apply to all interests in real property acquired for Project purposes irrespective of Federal participation in the cost of that real property.
- (2)    Covenant Assuring Nondiscrimination    The Contractor agrees to include a covenant in the title of real property acquired for the Project to assure nondiscrimination during the useful life of the Project.
- (3)    Recording Title to Real Property    To the extent required by FTA, the Contractor agrees to record the Federal interest in title to real property used in connection with the Project.

- (4) FTA Approval of Changes in Real Property Ownership The Contractor agrees that it will not dispose of, modify the use of, or change the terms of the real property title or any other interest in the site and facilities used in the Project without permission and instructions from FTA.

Section 31 Audit and Inspection The Contractor will permit the Department, the Comptroller General of the United States and the Secretary of the United States Department of Transportation or their authorized representatives, to inspect all vehicles, facilities and equipment purchased by the Contractor as part of the Project, all transportation services rendered by the Contractor by the use of such vehicles and equipment, and all relevant Project data and records. All payments made by the Contractor to the subcontractor for services required by this contract shall be subject to audit by the Department. The Contractor shall also permit the above named persons to audit the books, records and accounts of the Contractor pertaining to the Project. If the Contractor receives over \$500,000 in Federal funds from all sources, the Contractor shall submit an audit to the Department annually, following the procedures in the Single Audit Act of 1996, Circular A-133.

Section 32 Access to Records and Reports

- (1) Establishment and Maintenance of Accounting Records The Contractor shall establish and maintain, in accordance with requirements established by the Department, separate accounts for the Project, either independently or within its existing accounting system, to be known as the Project Account.
- (2) Documentation of Project Costs All charges to the Project Account shall be supported by properly executed invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges, in accordance with the rules and regulations of the Department.
- (3) Method of Payment The Department, using FTA Grant Program 5311 appropriations, shall reimburse the Contractor for the Federal portions, as they are made available to the Department, of eligible expenses incurred in completing the Project. Reimbursement is contingent upon the availability of FTA appropriations to the State. In no event shall the total amount reimbursed by the Department hereunder exceed eligible available Federal funds for the Project. Payment will be made by the Department on a reimbursable basis for actual costs incurred. The Contractor shall submit an original invoice detailing and supporting the costs incurred. Payment is subject to the submission to and approval by the Department of appropriate invoices, reports, and financial summaries. Any financial summaries submitted to the Department must include a record of the actual costs. Once the invoice has been approved by the Department, the Department shall submit the invoice for reimbursement from the FTA. Once the funds have been received from FTA and deposited with the State, the Department shall provide payment to the Contractor.
- (4) Reports The Contractor shall advise the Department regarding the progress of the Project at such times and in such manner as the Department may require including, but not limited to, meetings and interim reports. The minimum requirement for project reporting is detailed in Exhibit A.

The Contractor shall submit to the Department, at such time as may be required, such financial statements, data, records, contracts and other documents related to the Project as may be deemed necessary by the Department.

- (5) Articles of Incorporation The Contractor agrees to maintain private non-profit eligibility (where applicable), as described in application for capital assistance, by retaining valid Articles of Incorporation and adhering to all State and Federal regulations concerning this issue and will continue to do so for the Contract duration.

(6) Other Requirements

- (a) Where the Contractor is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- (b) Where the Contractor enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- (c) Where any Contractor which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- (d) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (e) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized



representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

- (f) Proof of Contractor's compliance with licensing requirements shall be furnished to the Department upon request.

**Section 33 Federal Changes** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Certifications and Assurances and the Master Agreement between the Department and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**Section 34 Termination (according to 49 CFR § 18 and 19)**

- (a) **Termination for Convenience** The State may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. If this contract is terminated, the State shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- (b) **Termination for Default** The State may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the State or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the State, or property supplied to the Contractor by the State.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

- (c) **Opportunity to Cure** The State in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other conditions.

If Contractor fails to remedy to State's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from State setting forth the nature of said breach or default, State shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude State from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- (d) **Waiver of Remedies for any Breach** No waiver by the Department or Contractor of any default shall constitute a waiver of the same default at a later time or of a different default. In the event that State elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract,

such waiver by State shall not limit State's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

Section 35     Civil Rights Act of 1964     The following requirements apply to this contract:

- (1)     Nondiscrimination Notice - In accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and the Title 49, Code of Federal Regulations. All of the text except the final section, entitled "Incorporation of Provisions," should be included in any contracts entered into by any contractor.

During the performance of this contract, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(a)     COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

1.     Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as regulations), which are herein incorporated by reference and made a part of this contract.
2.     Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, age, disability, income status, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3.     Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, age, disability, income status, or national origin.
4.     Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the DEPARTMENT or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the DEPARTMENT or the

FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the DEPARTMENT shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
  - b. Cancellation, termination or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.
7. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
  - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
  - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
  - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
  - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

The contractor shall take such action with respect to any subcontractor procurement as the DEPARTMENT or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the contractor may request the DEPARTMENT to enter into such litigation to protect the interests of the DEPARTMENT and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (2) Equal Employment Opportunity The following equal employment opportunity requirements apply to this contract:

(a) Race, Color, Creed, National Origin, Sex In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity, as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, "29 C.F.R. § 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

- (4) Disadvantaged Business Enterprise

- (a) This contract is subject to the requirements of Title 49, CFR § 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10 %. The agency's overall goal for DBE participation is 2.2 %. **See Attachment G for DBE Special Provisions and Assurance, Commitments, and Certifications.**
- (5) Access to Services for Persons with Limited English Proficiency The Contractor agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

Section 36 Other Non-Discrimination Statutes The Contractor agrees to comply with any other non-discrimination statute(s) that may apply to the Project.

Section 37 Breaches and Disputes Resolution Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Department's Director of Transit Plans and Programs. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Director of Transit Plans and Programs. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Transit Plans and Programs shall be binding upon the Contractor and the Contractor shall abide by the decision. The Contractor agrees to establish a written process whereby any protests, disputes, or conflicts arising out of the Section 5311 program will be properly heard and settled with proper notification given to the Department.

Section 38 Energy Conservation Requirements Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Department and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Section 39 Clean Water The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The Contractor agrees to report each violation to the Department and understands and agrees that the Department will in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

Section 40 Clean Air Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Contractor agrees to report each violation to the Department and understands and agrees that the Department will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

Section 41 No Obligation by the Federal Government to Third Parties The Department and the Contractor acknowledge and agree that notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract,

absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Department, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. The Contractor agrees to include the above clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Section 42     Program Fraud and False or Fraudulent Statements or Related Acts**

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR § 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms, the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole, or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5707 (n) (1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal Assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**Section 43     Lobbying** Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995, who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the State. See Attachment C for certification.

**Section 44     Incorporation of FTA Terms** The preceding provisions include, in part, certain Standard Terms and Conditions required by Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions

required by DOT, as set forth in FTA Circular 4220.1F and 9040.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Department requests which would cause the Department to be in violation of the FTA terms and conditions.

Section 45 Government-Wide Debarment and Suspension This contract is a covered transaction for purposes of 2 CFR § 180. As such the Contractor is required to verify that none of the contractor, its principals, as defined at 2 CFR § 180, or affiliates, as defined at 2 CFR § 180, are excluded or disqualified as defined at 2 CFR § 180. At a minimum, the Contractor must review the Excluded Parties Listing System to ensure that excluded parties do not participate in covered transactions.

The Contractor is required to comply with 2 CFR § 180 and must include the requirement to comply with 2 CFR § 180 in any lower tier covered transaction it enters into.

Sub-recipient will submit debarment and suspension certification. See Attachment B.

Section 46 Bus Testing The Contractor agrees to implement 49 U.S.C. A 5323 (c) and FTA's implementing regulation at 49 CFR § 665 with regards to bus purchases and further agrees that manufacturers will comply with the following:

- (1) A manufacturer of a new bus or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the Contractor at a point in the procurement process specified by the Contractor which will be prior to the Contractor's final acceptance of the first vehicle.
- (2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- (3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the Contractor prior to Contractor's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- (4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components. See Attachment A.

Section 47 Buy America The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. § 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be assembled in the United

States and have a 60 percent domestic content. See Attachment D for Certification of Compliance.

A bidder or offeror must submit to the Contractor the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

#### Section 48 Contract Work Hours and Safety Standards

- (1) Overtime requirements - No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages - The Department shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Section 49 Recycled Products Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 CFR § 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR § 247.



Section 50 ADA Access The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Assistance," 49 C.F.R. Part 27;
3. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
4. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
5. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
6. U.S. GSA regulations, "Accommodations for the Physically Handicapped" 41 C.F.R. Subpart 101-19; U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
7. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
8. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;
9. And any implementing requirements FTA may issue.

Section 51 Cargo Preference - Use of United States-Flag Vessels The Contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Section 52 Fly America The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their

contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**Section 53    National ITS Architecture**    To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5307 (c) of SAFETEA-LU, 23 U.S.C. Part 512 note, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq.; January 8, 2001, and later published policies or implementing directives FTA may issue, except to the extent FTA determines otherwise in writing.

**Section 54    Privacy Act**    The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1)    The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2)    The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal Assistance provided by FTA.

**Section 55    Special 13 (c) (\$5333)(b) Labor Protection Warranty – Transit Employee Protective Agreements**    The Contractor agrees, in the absence of a waiver by the U.S. DOL, to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program that is most current as of the date of execution of the Grant Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Contractor's Project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revisions thereto. Any U.S. DOL Special Warranty that may be provided and any documents cited therein are incorporated by reference and made part of this contract.

The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

The Contractor shall indemnify and save harmless the State, its officers and employees from all suits, actions, or claims of any character brought under the terms and conditions of the Special Section 5333 (b) Warranty. See Attachment E.

Section 56 Drug and Alcohol Testing The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR § 655, produce any documentation necessary to establish compliance with § 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations and the State to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR § 655 and review the testing process. The Contractor agrees further to certify annually its compliance with § 655 before the last day of December of each year this contract is in effect and submit the Management Information System (MIS) reports by March 10 of each year of this contract is in effect to the Section 5311 Program Manager. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurance for Federal Transit Administration Grants and cooperative Agreements," which is published annually in the Federal Register and distributed by the State. In addition, the Contractor agrees to have a drug and alcohol testing policy and procedure manual which is reviewed and approved by Department staff. The policy and procedure will follow the outline specified by FTA's "Implementation Guidelines for Drug and Alcohol Regulations In Mass Transit" (document #FTA-MA-26-5020-02-1). The Contractor also agrees to comply with U.S. DOT regulations for a Drug-Free Workplace, "Government-wide Requirements for Drug-Free Workplace (Financial Assistance), 49 CFR Part 32, that implement the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 *et seq.*

Section 57 Charter Service Operations The Department does not allow Charter Service Operations as indicated in the Utah Department of Transportation State Management Plan Federal Transit Grant Programs manual.

Note: Section 5311 sub-recipients may provide charter service with locally-owned equipment housed and maintained in non-federally funded facilities only if they create a separate company or division operated exclusively with local funds.

Section 58 School Transportation Operations Pursuant to 49 U.S.C. 5323(f) and 49 CFR § 605, the Contractor of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, contractor(s) may not use federally funded equipment, vehicles, or facilities.

Section 59 Davis-Bacon and Copeland Anti-Kickback Acts

- (1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to

the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including

the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (2) Withholding – The Department shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Department may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- (3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number or identification number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.  
(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Department for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely

all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible to ensure certified payrolls from all subcontractors are entered into the Electronic Certified Payroll Program.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(E) The Department requires weekly certified payrolls to be submitted through the Electronic Certified Payroll Program available in the Department Project Development Business System (PDBS). The Contractor can access the Contractor Module in PDBS and enter the certified payroll information and submit to the Department project office. Personal addresses and full social security numbers may no longer be used, after the first payroll submission. Contractors and subcontractors must use an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). Contractors and subcontractors must maintain a list of complete social security numbers and home addresses for employees. Government agencies are entitled to request or review all relevant payroll information, including social security numbers and addresses of employees. Contractors and subcontractors are required to provide such information upon request. Access to PDBS and the Electronic Certified Payroll Module requires contractors and subcontractors to be registered with the UDOT. Training arrangements for the Electronic Certified Payroll Module can be made by contacting the Department's Civil Rights Office. Where this paragraph conflicts with others of this section, this paragraph shall take precedence.

(iii) The contractor or subcontractor shall make the records required under paragraph



(a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

- (4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training



Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

- (5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility - (i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of

section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Section 60    Seismic Safety    The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

Section 61    Bonding

(1)    Bid Bond Requirements for Construction

(a)    Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to the Department and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b)    Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by the Department to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of the Department

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within ninety (90) days after the bid opening without the written consent of Department, shall refuse or be unable to enter into this Contract, as provided below, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided below, or refuse or be unable to furnish adequate and acceptable insurance, as provided below, he shall forfeit his bid security to the extent of the Department's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the Department as provided in the Instructions to Bidders) shall prove inadequate to fully recompense the Department for the damages occasioned by default, then the undersigned bidder agrees to indemnify the Department and pay over to the Department the difference between the bid security and the Department's total

damages, so as to make the Department whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

(2) Performance and Payment Bonding Requirements

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Department determines that a lesser amount would be adequate for the protection of the Department.
2. The Department may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Department may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
  - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
  - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

(3) Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The Department shall determine the amount of the advance payment bond necessary to protect the Department.

(4) Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The Department shall determine the amount of the patent indemnity to protect the Department.

(5) Warranty of the Work and Maintenance Bonds

- (a) The Contractor warrants to Department, the Architect and/or Engineer, and the Owner that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by Department, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the Department, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- (b) The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the Department and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to Department. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the Department written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

(6) Minimum Bonding Requirements

- (a) A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
  - 1. 50% of the contract price if the contract price is not more than \$1 million;
  - 2. 40% of the contract price if the contract price is more than \$1 million but

not more than \$5 million; or

3. \$2.5 million if the contract price is more than \$5 million.

- (d) A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Section 62 Not Used

Section 63 Not Used

ATTACHMENT A

To be completed by vehicle manufacturers.

**CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS**

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR § 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR § 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 2 CFR § 180.

Date

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Signature

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Company Name

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Title

---

ATTACHMENT B

To be completed by Contractor, third party contractors, and lower tier subcontractors.

**DEBARMENT AND SUSPENSION CERTIFICATION  
(LOWER TIER COVERED TRANSACTION)**

(To be submitted with a bid or Offer exceeding the small purchase threshold for Federal assistance programs.)

The prospective lower tier participant (Bidder/Proposer) certifies by submission of this Offer, that neither it nor its principals, as defined at 2 CFR § 180, or affiliates, as defined at 2 CFR 180, are excluded or disqualified as defined at 2 CFR § 180.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by \_\_\_\_\_. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to \_\_\_\_\_, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR § 180 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

\_\_\_\_\_

**Signature of Bidder or Proposer's Authorized  
Official**

\_\_\_\_\_

**Name and Title of Bidder or Proposer's  
Authorized Official**

\_\_\_\_\_

**Date**

## ATTACHMENT C

To be completed by Contractor, third party contractors, and lower tier subcontractors should this award be over \$100,000.

### LOBBYING CERTIFICATE

#### *Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### *Statement for Loan Guarantees and Loan Insurance*

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.



Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

THE CONTRACTOR CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE CONTRACTOR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31. U.S.C A 3801 et seq., APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

Signature of Contractor's Authorized Official \_\_\_\_\_

Name and Title of Contractor's Authorized Official \_\_\_\_\_

\_\_\_\_\_  
Date \_\_\_\_\_

ATTACHMENT D

To be completed by Contractor and third party contractors.

**BUY AMERICA**

The Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 CFR § 661, which provide that the Federal funds may be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed 49 CFR § 661.7. Separate requirements for rolling stock are set out at 5323(j) and 49 CFR § 661.11. Rolling stock is not subject to a general waiver must be manufactured in the United States and have a 60% domestic content.

A Contractor must submit to the Department the appropriate Buy America certification (below) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

**Certification requirement for procurement of steel, iron, or manufactured products**

***Certificate of Compliance with 49 U.S.C. § 5323(j)(1)***

The Contractor hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. § 661.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

***Certificate of Non-Compliance with 49 U.S.C. § 5323(j)(1)***

The Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j) and 49 C.F.R. § 661, but it may qualify for an exception pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**Certification requirement for procurement of buses, other rolling stock and associated equipment**

***Certificate of Compliance with 49 U.S.C. § 5323(j)(2)(C)***

The Contractor hereby certifies that it will comply with the requirements of 49 U.S.C. § 5323(j) and the applicable regulations of 49 C.F.R. § 661.11

Date

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Signature

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Company Name

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Title

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***Certificate of Non-Compliance with 49 U.S.C. § 5323(j)(2)(C)***

The Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j) and 49 C.F.R. § 661, but may qualify for an exception to the requirement consistent with 49 U.S.C. § 5323(j)(2)(C), and the applicable regulations in 49 CFR § 661.7

Date

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Signature

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Company Name

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Title

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ATTACHMENT E

To be completed by the Contractor.

**SPECIAL SECTION 5333(b) WARRANTY FOR  
NONURBANIZED AREA PROGRAMS**

\_\_\_\_\_, agrees that, in the absence of waiver by the Department of Labor, the terms and conditions of this Special Section 5333 (b) Warranty, shall apply for the protection of the transportation related employees of any employer providing transportation service assisted by the Project "\_\_\_\_\_", and the transportation related employees of any other surface public transportation providers in the transportation service area of the project.

\_\_\_\_\_, shall provide, pursuant to Section (A) of the Special Section 5333 (b) Warranty, and maintain at all times during the Project an accurate, up-to-date listing of all existing transportation providers which are eligible Recipients of Transportation assistance funded by the Project, in the transportation service area of the Project, and any labor organizations representing the employees of such providers.

\_\_\_\_\_, hereby, certifies in writing, acceptance of the terms and conditions of the Special Section (b) Warranty. Such acceptance will be sufficient to permit the release of Section 5311 funding in the absence of a finding on non-compliance by the Department of Labor.

THE CONTRACTOR CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE CONTRACTOR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31. U.S.C A 3801 et seq., APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

Signature of Contractor's Authorized Official \_\_\_\_\_

Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
(Print)

Date \_\_\_\_\_

ATTACHMENT F

To be completed by the Contractor (subrecipient).

**PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES.**

**49 U.S.C. § 5323  
49 CFR § 663**

**CERTIFICATION OF COMPLIANCE WITH FTA/UDOT**

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(Sub-Recipient)

hereby certifies that it will comply with the requirements of Section 319 of the Surface Transportation Act of 1987 and the applicable regulations of 49 CFR § 663 in that when purchasing revenue service rolling stock, it will conduct or cause to be conducted pre-award and post-delivery audits as prescribed by the regulations at 49 CFR § 663 and will maintain on file the certifications required under sub-pats B, C, and D of the regulations.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

By: \_\_\_\_\_ (\_\_\_\_\_)  
(Signature) (Print Name)

\_\_\_\_\_  
(Title) (Organization Name)

## ATTACHMENT G

To be completed by Contractor or third party contractor, whichever party is responsible for meeting DBE goal.

### **Bid Conditions DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

The Utah Department of Transportation (UDOT) is hereinafter referred to as "Department".

The agency receiving funds, or the subrecipient, is hereinafter referred to as "Contractor".

Note these bid conditions do not apply to Transit Vehicle Manufacturers who have submitted required DBE information to FTA and have been certified by FTA.

#### **POLICY**

##### **"Policy Statement"**

It is the policy of the Department to take all necessary and reasonable actions to ensure that DBEs as defined herein shall have equal opportunity to participate in the performance of contracts financed in whole or in part with US Department of Transportation (DOT) funds under this agreement as modified herein.

##### **"Objectives"**

The objectives of this policy are to:

1. Ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet *49 CFR 26* eligibility standards are permitted to participate as DBEs;
5. Remove barriers to the participation of DBEs in Federal aid contracts;
6. Assist the development of firms that can compete successfully in the marketplace outside the DBE program; and

7. Provide appropriate flexibility in establishing and providing opportunities for DBEs.

### **“Responsibilities”**

Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the Department in financial assistance agreements with DOT.

1. The Civil Rights Manager shall be the DBE liaison officer, who shall have direct, independent access to the Executive Director concerning DBE program matters. The Contractor shall be responsible for implementing all aspects of the DBE program and for supervising DBE participation. Adequate staff must be assigned to administer the DBE program.
2. The Department is responsible for oversight of the DBE participation covered by the Contract.

## **DBE BID AND PERFORMANCE CONDITIONS**

### **“Obligations”**

The contractor, subcontractor, service provider, or supplier at any lower tier shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department deems appropriate.

### **“Assurances”**

Each contract between the Department and the Contractor and each subcontract at any lower tier must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department deems appropriate.

### **A. CONTRACT GOAL**

1. The Department has determined that one or more can reasonably be expected to compete for the work contained in the proposal for this project. It is, therefore, the goal of the Department that DBE firms shall have an affirmative action opportunity to contract for the following percentage of work under this contract:
  - a. If the indicated DBE percent of the *CONTRACT DBE GOAL* is greater than 0.0 percent, complete Part A of the DBE BID ASSURANCE. Refer to Bidding Requirements, Section D, Subsection 1,a, of this Special Provision. (The commitment dollar amount up to the amount of the assigned goal is Race Conscious DBE participation. Any commitment dollar amount in excess of the assigned goal is Race Neutral Participation.)
  - b. If the indicated DBE percent of the *CONTRACT DBE GOAL* is 0.0 percent, complete Part B of the DBE BID ASSURANCE. Refer to Bidding Requirements, Section D, Subsection 1,b, of this Special Provision. (Any commitment to a DBE is Race Neutral Participation.)

**CONTRACT DBE GOAL:        0.0    Percent**

- c. At the time of Bid on Additive Projects, DBE commitment can only be made on Base bid items. No Additive bid items may be committed.

## 2. GOALS

### a. GOAL FOR BID EVALUATION

The above entered DBE percentage is a goal for bid evaluation to determine responsiveness of the proposal as it relates to this specification. Percentages for bidding purposes shall be calculated using dollar values and quantities as shown in proposals received for this project. Bidders shall compute the percentage of their DBE commitment by dividing the dollar amount of subcontract work that is being committed to certified DBE firms by the total dollar amount of the proposal. This will be the percentage of their DBE commitment to be used.

### b. RACE CONSCIOUS GOAL

DBE participation on projects that are assigned a Goal for Bid Evaluation that is greater than 0.0 percent is *race conscious* and the DBE commitment becomes a contract specification upon



award. The Bidder must submit with its Bid Proposal a *DBE Commitment, included in Part A*, that indicates:

- (1) Name of DBE firm
- (2) Work items to be performed
- (3) Total dollar amount of commitment

If the DBE commitment does not meet or exceed the assigned goal, the Bidder must submit with the Bid Proposal documentation of good faith efforts.

c. RACE NEUTRAL GOAL

DBE participation on projects that are assigned 0.0 percent Goal for Bid Evaluation is *race neutral* and does not become a contract specification upon award. The Bidder must take equal opportunity action to allow DBEs to compete for and perform on subcontracts. Only work classifications that the Bidder will subcontract need to be considered in evaluating equal opportunity action in the bid preparation. Contacts that have been made with DBE firms regarding potential work to be subcontracted and the results of such contacts are to be submitted with the prepared Bid Proposal in *Race Neutral DBE Documentation* which contains:

- (1) The work classifications that will be subcontracted.
- (2) DBE firms contacted.
- (3) Result of contact
- (4) Name of anticipated DBE subcontractor(s)
- (5) Anticipated work items to be performed by DBEs.
- (6) Anticipated dollar amount of subcontract(s).

The *Race Neutral DBE Documentation* is required to document equal opportunity action and to assist the Department with DBE reporting and DBE goal setting.

d. GOAL FOR CONTRACT PERFORMANCE

The Bidder's *DBE Commitment* becomes an attachment to the Bid Proposal and is a condition of award, and thereby becomes a contract specification. Upon award, this Race Conscious DBE Commitment also becomes the minimum goal for contract performance.

Commitments to DBEs that exceed the Goal for Bid Evaluation will be considered as both race conscious and race neutral. The dollar amount of the Goal for Bid Evaluation will be considered to be race conscious participation. Any dollar amounts in excess of the Goal for Bid Evaluation will be considered as race neutral participation.

It is the intent of this Special Provision that the DBE Firm(s) listed for *race conscious* participation, as a minimum level of participation, will perform to the extent indicated in the Bidder's DBE Commitment. The minimum level of DBE participation includes:

- (1) Indicated DBE firm(s),
- (2) Indicated work item(s) (bid items),
- (3) Indicated total dollar amounts.

Listed bid items shall be considered to be committed in their entirety unless Bidders designate otherwise in their DBE Commitment. If the DBE will perform only a part of the bid item, i.e., haul only, the Bidder must indicate what part the DBE will perform (Partial Performance). If the DBE will perform only a part of the quantity of the bid item, the Bidder must indicate the estimated quantity of the work to be performed by the DBE (Partial Quantity).

*Substitutions of DBE subcontractor(s), work item(s), or decreases of total dollar amount(s)* as indicated in the Bidder's DBE Commitment will not be allowed without prior submission of written justification to the Department and approval of the Department and the Civil Rights Manager.

After award of a contract, substitutions will not be allowed without prior submission of a written "hold harmless" statement from the DBE.

\*Any change by the Contractor or the Department in the DBE Commitment requires that the change is approved by the Civil Rights Office.

Substitution of race neutral participation in excess of the Goal for Bid Evaluation requires equal opportunity efforts to substitute with other DBE participation.

*\* Department generated decreases of quantities in individual bid items do not require prior approval of the Civil Rights Manager—but must be fully justified by the Department at the conclusion of the*

*project* . The Department's justification shall show the total estimated quantity, the final pay quantity as shown on the final estimate invoice, the quantity of the under-run, and the percent of under-run of the individual item. The explanation for the under-run shall include the reasons for the under-run and shall include as much detail as possible.

**There is a difference between the under-run of quantity on individual bid items versus the under-run of DBE commitment on DBE committed bid items, in the approval process. Refer to asterisks (\*) above.**

e. **GOAL FOR FINAL COMPLIANCE**

Percentages for final compliance shall be based on actual payments to DBEs. Over-runs and under-runs in individual contract items may require adjustments in the predetermined DBE percentage for a project if those items were not related to DBE performance. "The predetermined percentage for a project" refers to the percentage of the Contractor's DBE Commitment that becomes a contract specification upon award.

- f. For awards made to or contracts with recipients (sub recipients), the goal assigned by the Department becomes a contract requirement for the sub recipient. The sub recipient commits to meeting the goal or documenting good faith efforts by entering into an agreement with the Department. However, at the time of award, the sub recipient does not know who their contractors will be; therefore, the requirements above apply to contract awards made by the sub recipient. The sub recipient is responsible for assigning applicable contract goals on their contracts in order to meet the goal assigned by the Department. The sub recipient is responsible for collecting the required information noted above and coordinating with the Department to provide the Department with an opportunity to review the commitment documentation.

B. **DEFINITIONS**

For the purpose of this Special Provision, the following terms are defined:

1. **Contract** means a legally binding relationship obligating a seller to furnish supplies or services including but not limited to, construction and professional services, and the buyer to pay for them.
2. **Contractor** means one who participates, through a contract or subcontract (at any tier).

3. Disadvantaged Business Enterprise or DBE means a for profit small business concern.
- a. That has been certified to DBE status by the UUCP.
  - b. That is at least 51 per cent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 per cent of the stock of which is owned by one or more such individuals; and
  - c. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
  - d. Whose size is limited to average annual gross receipts of \$22,041,000 over the previous three fiscal years. The Secretary of Transportation may adjust this amount from time to time for inflation.

OR

Whose size is limited to the current SBA Business size standard(s) found in 23 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

4. DBE Goals mean:
- a. The Department's overall goal on DOT-assisted projects.
  - b. The race neutral portion of the overall goal reflects the level of DBE participation that would be expected absent the effects of discrimination.
  - c. There is an implied DBE goal on projects with no goals (0.0 percent) that have subcontracting opportunities.
5. DBE Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture to a degree commensurate with its ownership interest.

The Department's Civil Rights Office prior to bid opening must approve a DBE joint venture in order to be utilized for the satisfaction of contract DBE goals. A DBE Joint Venture application must be submitted allowing ample lead-time for the Civil Rights Office to review, evaluate, and verify information provided for in the application. An interview of the applicant may be necessary at the discretion of the Department prior to approval of the application. If an interview is deemed necessary it will be scheduled at the convenience of all parties.

6. Equal Opportunity Action requires individuals to be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

If a bidder requests or accepts bids for subcontract work, the bidder will request and accept bids from DBEs in the work classifications that potentially will be subcontracted.

7. Good Faith Efforts means efforts to achieve a DBE goal or other requirements of this part that by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirements.
8. Lack of Financial Fitness is a performance-based definition based solely on failure to pay promptly. There is no reference to financial status or financial capability.
9. Prompt Payment means payment made no later than 30 work days after receipt of payment by the Contractor or Subcontractor, Service Provider or Supplier at any lower tier.
10. Race Conscious measure or program is focused specifically on assisting only DBEs, including women-owned DBEs. The Department must establish contract goals to meet any portion of its overall DBE goal that it does not project being able to meet using race neutral means. To ensure that the DBE program continues to be narrowly tailored to overcome the effects of discrimination, the Department must adjust the use of contract goals as follows:
  - a. If during the course of any year it is determined that the overall goal will be exceeded, the Department will reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal.
  - b. If it is determined that the Department will fall short of its overall goal, then appropriate modifications in the use of race neutral

and/or race conscious measures will be made to allow the Department to meet the overall goal.

11. Race Neutral measure or program is one that is, or can be, used to assist all small businesses. The Department must meet the maximum feasible portion of its overall DBE goal by using race neutral means of facilitating DBE participation. Race neutral DBE participation includes:

- a. Any time a DBE wins a prime contract through customary competitive procurement procedures,
  - b. Is awarded a subcontract on a prime contract that does not carry a DBE goal,
  - c. Is awarded a subcontract from a prime contractor that did not consider its DBE status in making the award even if there is a DBE goal.
- For the purposes of this part, race neutral includes gender-neutrality.

12. Regular Employee is a person who:

- a. Would be working for the DBE firm on any other subcontract with any other contractor.
  - b. Is a permanent employee of the DBE firm
- Or
- Has been recruited through the traditional recruitment and/or employment centers
- c. Has not recently been employed by the prime contractor on the present project, another subcontractor on the present project, or the renter-lessor of equipment being used on the present project.
  - d. Is not a member of a construction crew that regularly works for a non-DBE.
  - e. Is not a licensed contractor who is at the time "unemployed" or "between jobs."

13. Regular Equipment is owned or leased and operated on a long term agreement and not on an *ad hoc* or contract by contract agreement.

- a. The equipment would be used by the DBE firm on any other subcontract with any other contractor.

b. The equipment would be owned by the DBE firm.

Or

The equipment would be leased/rented from traditional equipment lease/rental sources.

c. The DBE firm would have a rental/lease agreement for any rented or leased equipment.

d. The equipment cannot belong to:

- (1.) Prime Contractor
- (2.) Another subcontractor on the present project.
- (3.) Supplier of materials being installed by the DBE firm.

e. The equipment cannot come from another contractor fully operated.

14. Reasonable Bid

This is a bid the Department would accept if it were the only bid submitted. Generally, this is a bid within 10 percent of the owner's Estimate.

15. Responsible Bidder

A responsible bidder has the apparent ability and capacity to perform the contract requirements.

In addition to normal prequalification, a responsible bidder is defined as one who has signed (manually or electronically) and submitted with the bid the DBE Bid Conditions Assurance of good faith effort included as Part A of this Special Provision certifying the intention to meet the DBE goal of a proposed contract or to continue good faith effort to do so. These goals may be met by subcontracting or leasing contracts with a DBE or purchasing material from a DBE insofar as the work or material becomes a part of a proposed contract.

16. Responsive Bidder

a. A responsive bidder is a bidder who unequivocally offers to provide services or supplies in conformity with the material terms of the solicitation. In addition to normal prequalification and other bidding requirements, a responsive bidder in relationship to this Special Provision is defined as one who submits evidence of proposed subcontract performance with certified DBE firms to achieve the required dollar amount necessary to achieve the percentage goal.

- b. Bidders may be considered as presumptively responsive if they have failed to satisfy the advertised DBE goal set for the proposed contract but have certified in their bid that good faith efforts have been expended to meet the goal and that they will continue during the performance of the contract to locate, solicit, and involve DBE firms in contract performance. Documentation of the bidder's good faith efforts must be included with the bid package for the Department's review and assessment. Failure to do so shall render the bid non-responsive. The Department will reject the bid.

17. Satisfactory Completion of a subcontract occurs when:

- a. The subcontractor has satisfactorily completed in all respects the work under the Contract.
- b. The subcontractor has notified the Contractor in writing that the work of the subcontractor has been completed.
- c. The Contractor will be given a reasonable length of time to check quantities if necessary. Checking quantities does not guarantee the absolute correctness of quantities.
- d. The subcontractor has satisfactorily executed and delivered to the Contractor all documents, certificates and proofs of compliance required by the Contract. The satisfactory execution and delivery of these documents, certificates and proofs of compliance to the Contractor is a material requirement of the contract.
- e. The Contractor accepts in writing the work of the subcontract.
- f. Satisfactory Completion refers only to payment of retainage and accrued interest. A determination of Satisfactory Completion and payment in full for work performed does not relieve the contractor nor the subcontractor from any contractual obligation.

18. Satisfactory Performance means work performed and materials furnished in conformity with the plans and specifications.

19. Service Provider means a broker or a middle man. A business person who buys, sells or performs a service for another in exchange for a mark up or commission.

20. Socially and Economically Disadvantaged Individuals means any individual who is a citizen (or lawful admitted permanent resident) of the United States and who is:



- a. Any individual who the Department finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (1) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;
  - (2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;
  - (3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands, (Republic of Palau), the Commonwealth of the Northern Mariana Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - (5) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.
  - (6) Women.
  - (7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

21. Subcontractor

A subcontracting arrangement is generally considered to exist when a person or firm assumes an obligation to perform a part of the contract work and the following conditions are present.

- a. The person or firm performing the work is particularly experienced and equipped for such work.
- b. Compensation is related to the amount of work accomplished rather than being on an hourly basis.
- c. Choice of work methods, except as restricted by the specifications, and the furnishing and controlling of labor and equipment are exercised by the subcontractor with only general supervision being executed by the prime contractor.
- d. Personnel involved in the operation are under the direct supervision of the subcontractor and are included on the subcontractor's payroll.

All conditions involved shall be considered and no one condition alone will normally determine whether a subcontract actually exists. In all cases, a DBE subcontractor must be an independent organization, and the ownership and control by the socially and economically disadvantaged individual(s) must be real and continuing. The prime contractor, a subcontractor, or a supplier shall not be responsible for the various operating and management activities of a DBE firm.

22. Supplier

Provides or furnishes materials, goods or services that may be incorporated into the project. The supply transaction is to be documented by an appropriate purchase agreement that includes the required provisions for Federal-aid construction projects.

23. UUCP The Utah Unified Certification Program (UUCP) provides "one-stop shopping" to applicants for DBE certification, such that an applicant is required to apply only once for a DBE certification that is honored by all recipients of Federal-aid Funds in the State of Utah.

C. DETERMINATION OF DBE CONTRACTOR'S ELIGIBILITY BY UUCP

- 1. Any Contractor may apply to the UUCP for status as a DBE. Applications shall be made on forms provided by the UUCP, entitled "UNIFORM CERTIFICATION APPLICATION" or "Information for Determining DBE Joint Venture Eligibility," Form No. R-817. Application need not be made in connection with a particular bid. Only work contracted to certified DBE prime contractors or subcontractor to firms that have applied for and have been granted status as a DBE by the UUCP shall be considered toward contract goals as established in Subsection A.

2. It shall be the Contractor's responsibility to submit a DBE application so that the UUCP has time to review it. The UUCP will review applications in a timely manner but is not committed to approve DBE status within any given period of time. The UUCP must have ample lead time to review, evaluate, and verify information provided with an application.
3. The Department shall maintain a UUCP Unified DBE Directory of DBE Contractors, vendors, service providers and suppliers that is updated as changes occur for the purpose of providing a reference source to assist any bidder in meeting the requirements of this bid condition. Bidders must use the most current DBE information available on the web site when submitting bids. A current UUCP DBE directory representing certified DBE Contractors is available through the Department Civil Rights Office, and also on the Internet at (click on this link):

<http://www.udot.utah.gov/main/f?p=100:pg:,,,,:V,T:,198>

An electronic file of the UUCP DBE Directory is available for downloading to use in the Electronic Bidding System (EBS) at the following URL (click on this link):

<http://www.udot.utah.gov/main/f?p=100:pg:,,,,:V,T:,317>

4. In meeting the requirements of this bid condition, bidders are in no way limited to the DBE Directory referred to in 3 above in seeking out and negotiating with the DBE Contractors and determining which items of work shall be subcontracted to DBE Contractors. Bidders shall exercise their own judgments in selecting any subcontractor to perform any portion of the work.

The UUCP prior to bid opening must grant DBE status to any DBE Contractor or DBE Joint Ventures. DBE credit will not be allowed toward *race conscious* goals for a firm or joint venture that has not been DBE certified by the UUCP.

#### D. BIDDING REQUIREMENTS

All bidders must satisfy the bidding requirements of this part. A DBE prime contractor's performance does not count toward fulfilling the DBE goal. A prime bidder who is a DBE contractor shall meet the DBE goal by using DBE subcontractors or by using good faith efforts.

1. DBE Bid Assurance
  - a. Race Conscious Goal

For a bid with a DBE goal greater than 0.0 percent to be considered responsive, *Part A* of the DBE Bid Assurance must be completed and included in the BID PROPOSAL, certifying that they will meet or exceed the Goal for Bid Evaluation established in Subsection A, or that they fail to meet the goal but have and will put forth good faith effort to meet or exceed the goal of the DBE program. In either event, the Contractor shall continue efforts to consider and utilize DBE firms during the performance of the contract.

b. Race Neutral Goal

For a bid with a DBE goal of 0.0 percent to be considered responsive, *Part B* of the DBE Bid Assurance must be included in the BID PROPOSAL certifying that the Bidder has utilized equal opportunity action to allow DBE's to compete for and perform on subcontracts. *Part B* of the DBE Bid Assurance will be completed based upon the following information:

- (1) Bids with no subcontracting opportunities  
Bidders who intend to do all the work with their own organization will indicate this in Part B of the DBE Bid Assurance

After the award of the bid, in the event that a Contractor indicates that he does not intend to sublet any work and subsequently determines to sublet a portion of the work, the Contractor:

- (a) must justify why subcontract quotes were not a part of the Bid Proposal,
- (b) must utilize equal opportunity action to allow DBEs to compete for and perform on the work to be sublet,
- (c.) must submit the required Race Neutral Documentation with the proposed subcontract.

- (2.) Bids with subcontracting opportunities  
Race Neutral measure or program is one that is, or can be, used to assist all small businesses. The Department must meet the maximum feasible portion if its overall DBE goal by using race -neutral means of facilitating DBE participation.

Bidders who solicit non-DBE subcontract quotes will utilize equal opportunity action to allow DBEs to compete for and perform on subcontracts. Bidders who intend to sublet work must indicate so in Part B of the DBE Bid Assurance.

The results of the equal opportunity actions will be included with the Bid Proposal as *Race Neutral Documentation*. Part B of the Bid Assurance Form will include any of the following types of Race Neutral Documentation that the Bidder has included:

- (a) DBE Commitment
- (b) DBE Contact Log
- (c) Quote Comparison

In either event, the Contractor shall continue efforts to consider and utilize DBE firms during the performance of the contract.

## 2. DBE Commitment

For a bid to be considered responsive, Bidders shall submit the following information regarding DBE compliance with the prepared Bid Proposal:

Submit a DBE Commitment of work that will be subcontracted to certified DBE firm(s) as listed in the UUCP's Directory or DBE firms that have been approved by the UUCP prior to bid opening.

- a. The names of DBE firms that will participate in the contract;
- b. A specific description of the work each named DBE firm will perform (list specific bid items). Listed bid items shall be considered to be committed in their entirety unless Bidders designate otherwise in their DBE Commitment.
  - (1.) If mobilization is a bid item that is partially committed to a DBE, indicate the dollar amount of the DBE mobilization.
  - (2.) If a partial quantity is committed to a DBE, indicate the quantity committed to the DBE.
  - (3.) If a partial performance of an item is committed to a DBE, explain what part of the item the DBE will perform;
- c. The dollar amount of participation by each named DBE firm;

- d. If the contract goal is not met, evidence of good faith efforts.

The DBE Commitment is to be included in the bid prepared within, and said information will be kept confidential and will not be reviewed unless the Contractor is otherwise determined to be the low Bidder or the Department elects to review said information in making its determination as to award of the contract.

### 3. Race Neutral Commitment

For a bid to be considered responsive, Bidders shall submit the following information regarding equal opportunity compliance with their prepared Bid Proposal:

Submit a Race Neutral DBE Commitment of work that will be subcontracted to certified DBE firm(s) as listed in UUCP DBE\_Directory or DBE firms that have been approved by the Department prior to bid opening. The DBE Commitment will include:

- a. The bid item(s) or work classification(s) that will be subcontracted;
- b. The DBE firms that have been contacted. A reasonable number of DBEs available to perform the anticipated subcontract work must be contacted. The DBE firms must be given a reasonable amount of time to develop subcontract quotes.
- c. The results of the contacts with the DBE firms
- d. Name(s) of anticipated DBE subcontractor(s)
- e. Anticipated work items to be performed by DBE(s)
- f. Anticipated dollar amount of subcontract(s).

A specific description of the work each named DBE firm will perform (list specific bid items). Listed bid items shall be considered to be committed in their entirety unless Contractors designate otherwise in their DBE commitment.

- (1.) If mobilization is a bid item that is partially committed to a DBE, indicate the dollar amount of the DBE mobilization.
- (2.) If a partial quantity is committed to a DBE, indicate the quantity committed to the DBE.

- (3.) If a partial performance of an item is committed to a DBE, explain what part of the item the DBE will perform;

The *Race Neutral Documentation* submitted in the prepared bid will be kept confidential and not reviewed unless the Contractor is otherwise determined to be the low Bidder or the Department elects to review said information in making their determination as to award of the contract.

4. DBE Written Confirmation

Low Bidder shall submit to the Department within three (3) work days after the bid opening written confirmation from each DBE that it is participating in the contract as provided in the Prime Contractor's DBE Commitment or Race Neutral Documentation. The written confirmation shall include the following information:

- a. A description of the work that will be performed (list specific bid items). Listed bid items shall be considered to be committed in their entirety unless Contractors designate otherwise in their DBE commitment.

- (1) If mobilization is a bid item that is partially committed, please confirm the dollar amount of the mobilization to be performed.
- (2) If a partial quantity is committed, confirm the quantity to be performed.
- (3) If a partial performance of an item is committed, confirm what part of the item will be performed.
- (4) Unit bid prices for each bid item that is committed to a DBE.
- (5) Total dollar amounts (mathematical extensions) for each bid item that is committed to a DBE

- b. The dollar amount of participation by each named DBE firm.

5. Good Faith Efforts

Bidders who fail to meet the DBE goal for bid evaluation must demonstrate with documentary evidence that they made good faith efforts to do so. Bidders are required to include the Good Faith Efforts Documentation with the prepared Bid Proposal. The said information will

be kept confidential and not reviewed unless the Bidder is otherwise determined to be the low Bidder or the Department and authorized representatives elect to review said information in making their determination as to award of the contract. For the bid to be considered responsive, Bidders shall include with the BID PROPOSAL specific documentary evidence that good faith efforts have been made to meet the goal.

Attached hereto and marked Exhibit A, and by this reference made a part hereof, is a list of actions that may be used to prove the kinds of efforts prospective Bidders should consider in their attempts to demonstrate good faith efforts. The list of actions, as contained in Exhibit A, is not intended to be an exclusive list of efforts that a prospective Bidder may wish to consider in demonstrating good faith efforts to satisfy DBE participation requirements. The determination of good faith efforts shall be based upon the information and documentation of the actions supplied by the Bidder with the bid proposal. The Department reserves the right to investigate and verify such information or to request the low dollar Bidder to clarify information submitted at the time of bid.

6. Award of the Contract

The award of the contract, if awarded, will be made to the apparent successful responsive, responsible Bidder who submitted a reasonable bid for the contract and has complied with this Subsection D.

7. Administrative Reconsideration

Good faith efforts as used herein shall be determined on a case by case basis. If it is determined that the apparent low Bidder has failed to meet the requirements of Exhibit A, the bidder will be provided an opportunity for administrative reconsideration.

- a. Official(s) who did not take part in the original determination will perform the administrative reconsideration.
- b. The Bidder will have the opportunity to provide to written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.
- c. The Bidder will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- d. The Bidder will be notified in writing of the decision and the basis for the decision.



- e. The reconsideration decision is administratively final and is not appealable to FTA nor to the DOT.
- 8. For awards made to or contracts with recipients (sub recipients), the goal assigned by the Department becomes a contract requirement for the sub recipient. The sub recipient commits to meeting the goal or documenting good faith efforts by entering into an agreement with the Department. However, at the time of award, the sub recipient does not know who their contractors will be; therefore, the requirements above apply to contract awards made by the sub recipient. The sub recipient is responsible for assigning applicable contract goals on their contracts in order to meet the goal assigned by the Department. The sub recipient is responsible for administering the requirements of these DBE Special Provisions and coordinating with the Department to provide the Department with an opportunity to review documentation.

E. COUNTING DBE PARTICIPATION TOWARD GOALS FOR BID EVALUATION

- 1. The Department will recognize and grant DBE credit toward the goal for bid evaluation (*race conscious* goals) for work committed to DBE subcontractors ONLY in the types of work for which DBE certification has been granted by the UUCP prior to bid opening. It is necessary that all bidders refer to the UUCP DBE Directory for direction and guidance. A current copy of the DBE directory is available through the Civil Rights Office and on the Internet at (click on this link):

<http://www.udot.utah.gov/main/f?p=100:pg:.....V,T:,198>

An electronic file of the DBE Directory is available for downloading at the following URL (click on this link):

<http://www.udot.utah.gov/main/f?p=100:pg:.....V,T:,317>

- 2. The Department will grant DBE credit toward *race neutral* goals for work performed by firms who are not DBE certified prior to bid opening or who bid types of work for which DBE certification has not been granted by the Department prior to bid opening but subsequently are granted DBE certification.
- 3. Commitments to DBEs that exceed the Goal for Bid Evaluation will be considered as both race conscious and race neutral. The dollar amount of the Goal for Bid Evaluation will be considered to be race conscious participation. Any dollar amounts in excess of the Goal for Bid Evaluation will be considered as race neutral participation.

4. When a DBE bids as a prime contractor and utilizes themselves as a DBE participant, their commitment will be counted as race neutral, therefore this prime must meet the goal by using other DBE subcontractors.

F. COUNTING DBE PARTICIPATION TOWARD GOALS FOR PERFORMANCE

Subcontracts to DBEs that exceed the *Goal For Bid Evaluation* will be considered in part as race conscious participation and in part as race neutral participation. Any dollar amounts in excess of the *Goal For Bid Evaluation* will be considered as race neutral participation.

It is intended that the Contractor shall utilize the subcontractors designated in the DBE Commitment in the performance of the contract. Any changes in the Contractor's DBE Commitment, such as substitution of a DBE subcontractor, substitution of contract items, or decrease in total dollar amount must be approved by the Department. Unauthorized substitutions or eliminations may result in the imposition of sanctions. Failure to meet the Goal for Performance, that is established at the time of award by the Contractor's DBE Commitment, without adequate justification, including concurrence of the Department and Civil Rights Manager, shall result in the imposition of sanctions as provided in Part I of this Special Provision.

1. Only the value of the work actually performed by the DBE will count toward DBE goals.
2. Contractors may count toward their contract goals a portion of the total dollar value of a contract with a joint venture eligible under the standards of this bid condition equal to the percentage of the ownership and controls of the DBE partner in the joint venture.
3. The Department will recognize and grant DBE credit for work subcontracted and performed by DBE subcontractors ONLY in the types of work for which DBE certification has been granted by the UUCP prior to bid opening. It is necessary that all Bidders refer to the UUCP'DBE Directory for direction and guidance. A current copy of the UUCP DBE directory is available through the Civil Rights Office and on the Internet at (click on this link):

<http://www.udot.utah.gov/main/f?p=100:pg:::V,T:,198>

An electronic file of the DBE Directory is available for downloading at the following URL (click on this link):

<http://www.udot.utah.gov/main/f?p=100:pg:::V,T:,317>

4. Contractors may count toward their goals only the value of the work actually performed by the DBE toward the DBE goals.
  - a. Work performed by the DBE's own forces using "regular employees" and "regular equipment."
  - b. The cost of supplies and materials obtained and purchased by the DBE and equipment leased for the work of the contract.
  - c. Work that a DBE subcontracts to a lower tier DBE firm.
5. Contractors may not count toward the DBE goals:
  - a. Supplies and material purchased and equipment leased by the DBE from the prime Contractor or its affiliates or another subcontractor on the project.
  - b. Work that a DBE subcontracts to a lower tier non-DBE firm.
6. Contractors may count toward their goals only expenditures to a DBE that performs a commercially useful function in the work of the contract.
  - a. A DBE performs a "commercially useful function" when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
  - b. The Contractor shall evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors. The Department performs oversight of this evaluation.
  - c. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Contractor must examine similar transactions, particularly those in which DBEs do not participate.

- d. A DBE does not perform a commercially useful function if it does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.

7. The Contractor shall use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

- a. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- b. The DBE must be responsible for the management and supervision of the entire trucking arrangement for the purpose of meeting DBE goals.
- c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- e. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit *for the total value of the transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.*

**Example:** DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

- f. For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

8. Contractors may count expenditures with DBEs for materials or supplies as provided in the following:

- a. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies counts toward DBE goals.

For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

- b. If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies counts toward DBE goals.

For purposes of this paragraph, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

- (1) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- (2) A firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis.

- (3) Packagers, brokers, manufacturers representatives, or other persons or firms who arrange, or expedite, transactions are not regular dealers.
  - (4) A DBE trucking company that picks up a product from a manufacturer or regular dealer and delivers the product to the Contractor performs a delivery service. Credit will not be given based on a percentage of the cost of the product; credit will be allowed only for the cost of the transportation service.
9. If the materials or supplies are purchased from a service provider, the fees or commission charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies, count toward the DBE goals.

A Service Provider is a business that is neither a manufacturer nor a regular dealer but simply transfers title of a product from manufacturer to ultimate purchaser or a firm that puts a product into a container for delivery. A service provider charges a fee or a commission for assistance in the procurement of the materials and supplies, or fees or transportation for the delivery of materials or supplies required on a job site.

- a. Only the fees, commissions, or transportation performed by the DBE service provider count toward the DBE goals. The Contractor must determine that the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. The Department will perform oversight of this determination.
  - b. No portion of the cost of the materials and supplies count toward the DBE goals. Documentary evidence of the supply agreements, i.e., sales contract, purchase order, etc., shall be submitted to the Resident Engineer or Consultant Engineer or UDOT PTT Program Manager before starting the project. The agreement shall set forth the estimated quantities, unit prices, total dollar amounts, material guarantees, delivery, and payment requirements including the requirements listed part E, 4, e, of this DBE Special Provision.
10. Prompt payment for the work accomplished is an integral part of the concept of commercially useful function.

See Section F, Subsection 6,a for a definition of "commercially useful function."
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#### G. CONTRACTOR'S RESPONSIBILITY

1. It is the Contractor's responsibility to determine the level of professional competence and financial responsibility of any proposed DBE subcontractor. The Contractor shall ascertain that the proposed DBE subcontractor is particularly experienced and equipped for the work of the subcontract.
2. It is the Contractor's responsibilities to monitor and assure that DBE's listed to fulfill DBE goals perform a commercially useful function.

#### H. DBE SUBCONTRACTOR'S FAILURE TO PERFORM SUCCESSFULLY

If, during the performance of the contract, the Prime Contractor determines that a DBE subcontractor is unable to perform successfully, the Contractor shall make good faith efforts to replace the DBE subcontractor with another DBE to fulfill the Goal for Bid Evaluation. For Race Conscious DBE participation, the Contractor shall consider the uncompleted DBE committed work items as well as other work items as a part of the good faith efforts. All substitutions of DBE subcontractors shall receive prior approval by the Department.

The Contractor shall not substitute DBE subcontractor(s), work item(s), nor decrease dollar amount(s) as indicated in the Contractor's DBE Commitment without prior submission of written justification to the Department and without prior approval of the Department and the Civil Rights Manager.

The Contractor shall not substitute DBE subcontractor(s), work item(s), nor decrease dollar amount(s) as indicated in the Contractor's DBE Commitment Substitutions without prior submission of a written statement from the DBE consenting to the substitution or decrease and holding the Department harmless for approving the substitution.

Unauthorized substitutions of the DBE(s), under-runs of work item(s), or decreases in dollar amount(s) may result in the imposition of sanctions as allowed under Section I.

The Department reserves the right to authorize completion of the work that was subcontracted to a DBE who is unable to perform successfully by either of the following methods:

1. Approve, at no additional cost to the Department, a replacement DBE subcontractor and, when appropriate, modify the contract to provide for reasonable extra time necessary to obtain a DBE replacement at no additional cost to the Department.

2. Direct the Contractor to perform at unit bid prices. In the event this option is selected, the percentage DBE goal will be adjusted as may be appropriate.

#### I. SANCTIONS

1. The Contractor's DBE Commitment becomes a 3-part commitment comprised of the DBE Contractor(s), work item(s) and dollar amount(s). The Commitment becomes a contract specification upon award of the contract and becomes the minimum goal for contract performance.

If the Contractor fails to achieve the minimum goal, established in the contract at the time of the award of the contract or later modified, the contract payments shall be reduced as a liquidated damage and not as a penalty by an amount equal to the dollar amount of work not performed by the DBE. The dollar amount of any sanction will be computed using the unit prices indicated in the DBE subcontract

Exceptions:

- a. Any authorized adjustment in the DBE Commitment that has been approved by the Department and Civil Rights Manager.
- b. Race neutral participation.

#### J. RECORD KEEPING

1. The Department must create and maintain a Bidders list consisting of all firms bidding on prime contracts and bidding or quoting subcontractors on DOT-assisted projects. For every firm, the following information must be submitted annually:
  - a. Firm name
  - b. Firm address
  - c. Firm's status as a DBE or non-DBE
  - d. Age of firm
  - e. Annual gross receipts of the firm.

Every firm bidding or quoting as a prime or subcontractor at any level on DOT-assisted projects must register annually with the Department.



2. With the bid or no later than 10 work days after bid opening date, each and every prime bidder must submit to the Department a list of all firms bidding and/or quoting as subcontractors, service providers or suppliers.\* The Prime Bidder must also submit for each and every firm sub-quoting the following information:

- a. Firm Name
- b. Firm address
- c. Work classification(s) bid by subcontractor, service provider or supplier:

- (1) Building
- (2) Concrete: Curb & gutter, Flatwork, Inlet Boxes, etc.
- (3) Concrete: Structural
- (4) Consulting firms
- (5) Demolition
- (6) Electrical: Hwy lighting, signals & fiber optics
- (7) Equipment rentals and sales
- (8) Excavation
- (9) Fencing
- (10) Grading
- (11) Guardrail
- (12) Landscaping & erosion control
- (13) Miscellaneous
- (14) Painting: Highway structures
- (15) Painting: Highway striping & painted messages
- (16) Paving: Asphalt highway & runway, etc.
- (17) Paving: Concrete
- (18) Paving: Miscellaneous
- (19) Pipe Culverts, drainage, sewer & water
- (20) Reconstruction : Manholes, etc.
- (21) Rotomilling
- (22) Sawing & sealing
- (23) Signs permanent
- (24) Steel reinforcing
- (25) Steel structural
- (26) Surveying
- (27) Traffic Control: Flagging
- (28) Traffic Control: Temp. Signs and Devices
- (29) Trucking
- (30) Supplier: Manufacturer
- (31) Supplier: Regular Dealer
- (32) Supplier: Service Provider

## Exhibit A

### Suggested Actions and Required Documentation to Demonstrate **Good Faith Efforts to Comply With DBE Requirements**

A Bidder must show that it took necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness, can reasonably be expected to fulfill the program requirement. The efforts employed should be those that would be taken if a Bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements.

Documentary evidence of each action taken must be submitted with the Bid Proposal.

The following is taken, with some modification, from CFR 49 Part 26, Appendix A. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive.

## GUIDANCE CONCERNING GOOD FAITH EFFORTS

- I. When the Department establishes a contract goal on a Federal aid contract, a Bidder must, in order to be responsive, make good faith efforts to meet the goal. The Bidder can meet this requirement in either of two ways:
  - A. The Bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose.
  - B. If it doesn't meet the goal, the Bidder can document adequate good faith efforts. This means that the Bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II. In any situation in which the Department has established a contract goal, CFR 49, Part 26 requires the Department to use the good faith efforts mechanism of this part. It is up to the Department to make a fair and reasonable judgment whether a Bidder that did not meet the goal made adequate good faith efforts. It is important for the Department to consider the quality, quantity, and intensity of the different kinds of efforts that the Bidder has made. The efforts employed by the Bidder should be those that one could reasonably expect a Bidder to take if the Bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. The Department emphasizes, however, that its determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
- III. The U. S. Department of Transportation also strongly cautions the Department against requiring that a Bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the Bidder makes an adequate good faith efforts showing. This rule specifically prohibits the Department from ignoring bona fide good faith efforts.

- IV. The following is a list of types of actions that the Department should consider as part of the Bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
- A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The Bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
  - B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime Contractor might otherwise prefer to perform these work items with its own forces.
  - C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
  - D. Negotiating in good faith with interested DBEs.
    - (1) It is the Bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
    - (2) A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.
      - (a) The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable.

- (b) No specific price differential has been established by 49 CFR 26. This approach allows flexibility.
  - (c) Along with the reasonableness of the cost necessarily comes the fact that prime Contractors are not expected to bear unreasonable costs.
  - (d) Any burden that a non-DBE subcontractor might face is also limited by the reasonableness of competing bids.
- (3) The ability or desire of a prime Contractor to perform the work of a contract with its own organization does not relieve the Bidder of the responsibility to make good faith efforts. Prime Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- (4) The ability or desire of a prime Contractor to bundle the work of a subcontractor who wishes to perform all the work of the subcontract with its own organization does not relieve the Bidder of the responsibility to require a subcontractor to make good faith efforts. Subcontractors are not required to accept higher quotes from lower tier DBEs if the price difference is excessive or unreasonable.
- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the project goal.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women Contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.  
NOTE: The DBE 'Contact Log' can be used to document the following efforts:
  - IV. A.
  - IV. C.
  - IV. D. (1)

The 'Quote Comparison' can be used to document the following efforts:

IV. B.  
IV. D. (3)

- V. In determining whether a Bidder has made good faith efforts, the Department may take into account the performance of other Bidders in meeting the contract. For example, when the apparent successful Bidder fails to meet the contract goal, but others meet it, the Department may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful Bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful Bidder having made good faith efforts.

Submit with the Bid Proposal documentary evidence to prove that good faith efforts were accomplished:

1. Submit copies of all solicitations: correspondence, faxes, advertisements, telephone logs with dates, times, names of persons contacted, nature of conversation, DBEs' responses, and etc.
2. If DBEs submitted quotes that were not used because the range of additional costs was determined to be excessive or unreasonable, submit the range that has been determined by the Bidder to be a reasonable range of additional costs and explain how that range was determined.
3. As a part of demonstrating a reasonable range of additional costs, submit copies of all subcontractor quotes, copies of spread sheet(s) which compare all DBE quotes with non-DBE quotes and which include bid item(s) quoted, work classifications, quantities, prices, and dollar amounts.
4. Submit a narrative of specific names and types of information, assistance, considerations given, and efforts to assist DBEs under Item IV, subparts C through F.

**DBE BID ASSURANCE  
COMPLETE ONLY PART A. OR PART B.**

**PART A. RACE CONSCIOUS DBE PARTICIPATION  
SPECIFIC ASSIGNED CONTRACT DBE GOAL FOR BID EVALUATION  
0.0 PERCENT**

If the DBE goal which is indicated in Section A, CONTRACT GOAL, of BID CONDITIONS, DISADVANTAGED BUSINESS ENTERPRISE (DBE) is greater than 0.0 percent, complete only Part A, and submit *DBE Commitment*, and if applicable, *Documentation of Good Faith Efforts*.

By signing the BID REPORT (either manually or electronically), it is understood that those individuals who sign as owners or authorized representatives of the Bidder, have read and are familiar with SPECIAL PROVISION, BID CONDITIONS, DISADVANTAGED BUSINESS ENTERPRISE and hereby certify that good faith efforts have been utilized to meet or exceed the goal of the DBE Program as established by the DBE Special Provision.

Indicate intended DBE commitment.

\_\_\_\_\_ We intend to meet or exceed the contract goals as per the DBE Commitment which is submitted with the Bid Proposal.

RACE CONSCIOUS AND RACE NEUTRAL COMMITMENT \_\_\_\_\_  
PERCENT

\_\_\_\_\_ We fail to meet the advertised goal. This firm commits to DBE participation as per the DBE Commitment that is submitted with the Bid Proposal and to continue Good Faith Efforts throughout the performance of the project. Documentation of Good Faith Efforts is submitted with the Bid Proposal, including:

1. DBE Contact Log Report
2. Quote Comparison Report

Bidders who intend to do all the work with their own organization will indicate this in their proposal by checking below.

\_\_\_\_\_ We do not intend to sublet a portion of the contract work

After the award of the bid, in the event that the bidder indicates that he does not intend to sublet any work and subsequently determines to sublet a portion of the work, the Bidder:

- (a) must justify why subcontract quotes were not a part of the Bid Proposal,
- (b) must utilize equal opportunity action to allow DBEs to compete for and perform on the work to be sublet,

(c.) must submit the required commitment information with the proposed subcontract.

---

**PART B. RACE NEUTRAL DBE PARTICIPATION**  
**ASSIGNED CONTRACT DBE GOAL FOR BID EVALUATION**  
**\_\_\_\_\_ PERCENT**

If the DBE goal, which is indicated in Section A, CONTRACT GOAL, of BID CONDITIONS, DISADVANTAGED BUSINESS ENTERPRISE (DBE) is 0.0 percent, complete only Part B and submit *Race Neutral DBE Information*.

By signing the BID REPORT (either manually or electronically), it is understood that those individuals who sign as owners or authorized representatives of the Bidder, have read and are familiar with APPENDIX A, SPECIAL PROVISION, BID CONDITIONS, DISADVANTAGED BUSINESS ENTERPRISE and hereby certify that equal opportunity action has been utilized to allow DBEs to compete for and perform on subcontracts.

\_\_\_\_\_ We do not intend to sublet a portion of the contract work.

\_\_\_\_\_ We intend to sublet a portion of the contract work. Our firm has taken equal opportunity action to allow DBEs to compete for and perform on subcontracts. Any DBEs utilized by our firm for DBE participation at the time of bid, on a 0.0 percent project goal, will become Race Neutral DBE Information.



## **DBE BID ASSURANCE AND COMMITMENT**

Please complete the following form detailing DBE participation with this Bid Proposal. Please complete one form for each DBE subcontractor.

**Name and address of DBE firm:**

**Specific description of work to be performed, including quantities. Include bid items, if applicable. Note whether partial or complete performance is included. If partial performance is included, list specific work items the DBE firm is to perform:**

**Dollar amount of the work the DBE is to perform:**

### **Bidder's Commitment**

Bidder's Name & Title:

Signature:

Date:

### **Participating DBE Commitment Confirmation**

DBE's Name & Title:

Signature:

Date:

ATTACHMENT G continued

To be completed by the Transit Vehicle Manufacturer (TVM).

**TVM DBE APPROVAL CERTIFICATION**

I hereby certify that the Offeror has complied with the requirements of 49 CFR §26.49, Participation by Disadvantaged Business Enterprises in DOT Programs, and that its goals have not been disapproved by the Federal Transit Administration.

Note: If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal. In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying 49 CFR § 26.45. See 49 CFR § 26.49(b)

\_\_\_\_\_  
Signature of the Offeror's Authorized Official

\_\_\_\_\_  
Name and Title of the Offeror's Authorized Official

\_\_\_\_\_  
Date

ATTACHMENT H

To be completed by the Contractor and third party contractors.

**SEISMIC SAFETY CERTIFICATION**

**42 U.S.C. § 7701 et seq. 49  
49 CFR § 41**

**CERTIFICATION OF COMPLIANCE WITH FTA**

\_\_\_\_\_  
(Sub-Recipient)

hereby certifies that it will comply with the requirements of 42 U.S.C § 7701 et seq. 49 and 49 CFR § 41 when constructing new buildings or additions to existing buildings.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 20 ,

By: \_\_\_\_\_ ( \_\_\_\_\_ )  
(Signature) (Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Organization Name)

## EXHIBIT A - WORK PLAN

### PROJECT SCOPE

**Project Description:** Project Administrative funds will be used for salaries and fringe, supplies, office equipment and overhead expenses for the administrative expenditures of the operation of CATS. Operating funds will be used for driver, dispatch salaries and fringe, maintenance, fuel & oil, insurance etc. for the CATS service. Capital will be for the procurement of one (1) ADA Van for the CATS service.

**Geographic Area Served by Project:** Cedar City, Utah service area.

### REQUIRED REPORTING

To be completed by Program Manager or Compliance Manager

Reporting Requirement / Form	Due Date(s)
Milestone/PTT	January, 15th
Milestone/PTT	April, 15th
Milestone/PTT	July, 15h
Milestone/PTT	October, 15th

**EXHIBIT B**  
**FTA SECTION 5311 PROGRAM**  
**CONTRACT BUDGET AMOUNTS**  
**FFY 2012 FUNDING**

<b>ALI</b>	<b>ALI Description</b>	<b>Project Budget Description</b>	<b>Budget Amt</b>	<b>Federal Share</b>	<b>Local Share</b>
11.79.00	Project Administration	Project Admin salary and Fringe	23,750	19,000	4,750
30.09.01	Operating	Transit operations salary and fringe	50,000	25,000	25,000
11.12.15	Capital – Replacement ADA Van	One (1) ADA Van (Replacement)	50,000	40,000	10,000
<b>TOTAL</b>			<b>\$123,750</b>	<b>\$84,000</b>	<b>\$39,750</b>

**CONTRACTOR MUST ATTACH TO EXHIBIT B THE FOLLOWING:**

- 1) Complete approved contractor budget for contract period and identify sources of local share.
- 2) Letter from governing contractor agency or division committing specific local share amount and sources.
- 3) Financial audits from the past three years.

## EXHIBIT C – CONTRACT CLAUSE MATRIX

		TYPE OF PROCUREMENT***				
Clause		Professional Services / A&E	Operations / Management	Rolling Stock Purchase	Construction	Materials & Supplies
Access to Records and Reports	Applicability	All	All	All	All	All
	Flow Down*	Recipients and subrecipient				
	Language**	Not mandated				
Federal Changes	Applicability	All	All	All	All	All
	Flow Down*	All				
	Language**	Not mandated				
Termination	Applicability	>\$10,000 if 49 CFR 18 applies	>\$10,000 if 49 CFR 18 applies	>\$10,000 if 49 CFR 18 applies	>\$10,000 if 49 CFR 18 applies	>\$10,000 if 49 CFR 18 applies
	Flow Down*	All exceeding \$10,000 except contracts with non-profit orgs and institutions of higher learning				
	Language**	Not mandated				
Civil Rights	Applicability	All	All	>\$10,000	All	All
	Flow Down*	All				
	Language**	Any deviation to proposed model language should be closely coordinated with counsel				
Disadvantaged Business Enterprise (DBE)	Applicability	All	All	All	All	All
	Flow Down*	A formal clause flows down to all contracts and subcontracts above the micro-purchase level				
	Language**	Not mandated				
Breaches and Dispute Resolution	Applicability	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
	Flow Down*	All				
	Language**	Not mandated; language depends on contract type and counsel should be consulted				
Energy Conservation	Applicability	All	All	All	All	All
	Flow Down*	All				
	Language**	Not mandated; state dependent				
Clean Water	Applicability	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
	Flow Down*	All				
	Language**	Not mandated but must include minimum mandatory requirements				
Clean Air	Applicability	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
	Flow Down*	All exceeding \$100,000				
	Language**	Not mandated				
No Government Obligations to Third Parties	Applicability	All	All	All	All	All
	Flow Down*	Not required to flow down, but is recommended to clarify that the Federal Government is not a party to the contract				
	Language**	Not mandated				
Program Fraud and False or Fraudulent Statements and Related Acts	Applicability	All	All	All	All	All
	Flow Down*	All who will make, present, or submit covered claims and statements				
	Language**	Not mandated				
Lobbying	Applicability	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
	Flow Down*	All				
	Language**	Mandated by 49 CFR 20				
Incorporation of FTA Terms	Applicability	All	All	All	All	All
	Flow Down*	All				
	Language**	Not mandated				
Government-Wide Debarment and Suspension	Applicability	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
	Flow Down*	All exceeding \$25,000 or any contract or subcontract for Federally required auditing services				
	Language**	Not mandated				
Bus Testing	Applicability			Rolling stock/turnkey		
	Flow Down*	Turnkey contractor				
	Language**	Not mandated				
Buy America	Applicability			>\$100,000	>\$100,000	>\$100,000
	Flow Down*	Recipients, subrecipients, and 1 <sup>st</sup> tier contractors				
	Language**	Not mandated				
Contract Work Hours and Safety	Applicability		>\$100,000 (transp services excepted)	>\$100,000	>\$100,000 (also ferries)	

		TYPE OF PROCUREMENT***				
Clause		Professional Services / A&E	Operations / Management	Rolling Stock Purchase	Construction	Materials & Supplies
Standards Act	Flow Down*	All				
	Language**	Any deviation to proposed model language should be closely coordinated with counsel				
Recycled Products	Applicability		EPA-selected items \$10,000 or more annually		EPA-selected items \$10,000 or more annually	EPA-selected items \$10,000 or more annually
	Flow Down*	All				
ADA Access	Language**	Not mandated				
	Applicability	A & E	All	All	All	All
Cargo Preference	Flow Down*	All				
	Language**	Not mandated				
Fly America	Applicability			Transported by ocean vessel	Transported by ocean vessel	Transported by ocean vessel
	Flow Down*	All when contract or subcontract may be involved with transport by ocean vessel				
National ITS Architecture	Language**	Not mandated				
	Applicability	Foreign air transp. / travel	Foreign air transp. / travel	Foreign air transp. / travel	Foreign air transp. / travel	Foreign air transp. / travel
Privacy Act	Flow Down*	Recipients, subrecipients, and 1 <sup>st</sup> tier contractors				
	Language**	Not mandated				
Transit Employee Protective Agreements	Applicability	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
	Flow Down*	All				
Drug and Alcohol Testing	Language**	Not mandated				
	Applicability	When drug and alcohol files maintained	When drug and alcohol files maintained	When drug and alcohol files maintained	When drug and alcohol files maintained	When drug and alcohol files maintained
Charter Bus and School Bus	Flow Down*	All				
	Language**	Not mandated				
Davis-Bacon & Copeland Anti-Kickback Acts	Applicability		Transit Operations			
	Flow Down*	All				
Seismic Safety	Language**	Not mandated				
	Applicability		Transit Operations			
Bonding	Flow Down*	All performing safety-sensitive functions with few exceptions				
	Language**	Not mandated				
Patent and Rights in Data	Applicability		All			
	Flow Down*	Recipients, subrecipients, and 1 <sup>st</sup> tier service contractors				
Seismic Safety	Language**	Not mandated				
	Applicability				All >\$2,000 (also ferries)	
Bonding	Flow Down*	All				
	Language**	Any deviation to proposed model language should be closely coordinated with counsel				
Patent and Rights in Data	Applicability	A & E for new buildings & additions			New buildings & additions	
	Flow Down*	Recipients, subrecipients, and 1 <sup>st</sup> tier contractors				
Bonding	Language**	Not mandated				
	Applicability				>\$100,000	
Patent and Rights in Data	Flow Down*	Recipients, subrecipients, and 1 <sup>st</sup> tier contractors				
	Language**	Not mandated; percentages are minimum requirements				
Patent and Rights in Data	Applicability	R & D				
	Flow Down*	All				
Patent and Rights in Data	Language**	Not mandated				

\*Flow down – Federally required clauses and requirements, as a general rule, are required to be in each third party contract at every tier and in each subrecipient agreement at every tier. When clauses are required to flow down, the clauses and requirements flow down to all levels of the Federal funding change beginning with the grantee. The matrix indicates to what level clauses must flow down.

\*\*Language – This row will indicate whether language is mandatory or suggested. FTA's Best Practices Procurement Manual and UDOT PTT Procurement Guide contain suggested language. FTA Master Agreement and the CFR provide additional language requirements and language.

\*\*\*This exhibit is provided as a guide and is not considered exhaustive. Contractors should refer to FTA Circular 4220.1F, the FTA Master Agreement, FTA's Best Practices Procurement Manual, and the UDOT PTT Procurement Guide for additional information on required Federal contract clauses and applicability.



## EXHIBIT D – CERTIFICATION MATRIX

CERTIFICATION	COMMENTS	REGULATORY REFERENCE
<b>Bus Testing Certification</b>	All procurements of new model transit buses and vans and existing models being modified with a major change in configuration or components.	49 CFR Part 665
<b>Debarment and Suspension Certification</b>	Procurements exceeding \$25,000	FTA Master Agreement 3.b
<b>Lobbying Certification</b>	Procurements exceeding \$100,000	49 CFR Part 20
<b>Buy America Certification</b>	Procurements of steel, iron, or manufactured products exceeding \$100,000	49 CFR Part 661
<b>Special Section 5333(b) Warranty For Nonurbanized Area Programs Certification</b>	All operation procurements	FTA Master Agreement 24.d
<b>Pre-Award and Post-Delivery Audits Of Rolling Stock Purchases Certification</b>	All rolling stock procurements	49 CFR Part 663
<b>Transit Vehicle Manufacturer DBE Certification</b>	All rolling stock procurements	49 CFR Part 26
<b>DBE Commitment Certification</b>	All procurements	49 CFR Part 26
<b>Seismic Safety Certification</b>	A&E and construction procurements for new buildings or additions to existing buildings	FTA Master Agreement 23.e



**CEDAR CITY  
CITY COUNCIL AGENDA ITEM 7  
STAFF INFORMATION SHEET**

**To:** Mayor and City Council

**From:** Jonathan Stathis

**Council Meeting Date:** February 5, 2014

**Subject:** **Review Bids for the Cedar Canyon Water Tank Replacement Project.**

**Discussion:** This project involves the replacement of the existing Cedar Canyon Water Tank.

Cedar City received 2 bids for the Cedar Canyon Water Tank Replacement project. The low bidder for the project is Urieco Construction. The following table shows a summary of the bids that were received.

**Bid Summary**

Name of Contractor	Bid Amount
Urieco Construction	\$1,166,407.03
Schmidt Construction	\$1,365,532.00

The total bid puts the project over budget and so it is recommend that some of the bid alternates be deleted. It is recommended that additive alternates #5, #6, #7, #9, and deductive alternate #2 be deleted from the total bid.

**Bid Summary with Alternates deleted**

Name of Contractor	Bid Amount
Urieco Construction	\$1,027,062.65
Schmidt Construction	\$1,208,040.00

Bid Alternate #5 is an item for removing the old Cedar Canyon Tank at a cost of \$25,000. If this item is not done right now, then it would need to be budgeted to be done later when funds allow.

There are some appurtenances on the tank that the City is purchasing that will be salvaged by the contractor. It is recommended that those items be considered surplus property.

In order to get the project within budget, an additional \$50,000 is requested to be transferred from other projects that have been completed this year. It is proposed that \$20,000 be transferred from the Spilsbury Booster Pump Replacement project and \$30,000 be transferred from the Shurtz Spring Line project. Both of these projects have been completed and they came in under budget.

If this bid is awarded it would be on the condition that the contractor provide the required executed bonding, insurance documents, immigration status verification, and that the Mayor be authorized to sign the contract with the contractor.

The following table provides a summary of the proposed budget for this project:

**Project Funding  
Cedar Canyon Water Tank Replacement Project  
(Account #51-40-722)**

	<u>Funding</u>	<u>Expenses</u>	<u>Balance</u>
<u>Funding in FY 2013-14 –</u>			
Acct. #51-40-722 (Cedar Canyon Water Tank)	\$1,025,000		
Acct. #51-40-740 (Spilsbury Booster Pump Replacement)	\$20,000		
Acct. #51-40-734 (Shurtz Spring Line)	\$30,000		
 <u>Expenses –</u>			
Purchase the used tank from GHID		(\$20,000)	
Construction Contract		(\$1,027,063)	
Engineering/Misc/Materials Testing/Contingency		(\$27,937)	
 Totals –	<b>\$1,075,000</b>	<b>(\$1,075,000)</b>	<b>\$0</b>

**CEDAR CITY  
COUNCIL AGENDA ITEM 8  
STAFF INFORMATION SHEET**

**TO:** Mayor and Council

**FROM:** Kit Wareham

**DATE:** February 5, 2014

**SUBJECT:** Consider Maintenance Agreement with The Utah Department of Transportation (UDOT) for the Landscaping Improvements on the South Interchange Reconstruction Project.

**DISCUSSION:**

It is UDOT's policy that if landscaping improvements are installed on an existing freeway interchange or as part of an interchange construction or reconstruction project that the associated community is responsible for the maintenance of those landscaping improvements. The attached proposed agreement requires Cedar City to be responsible for the maintenance of all the landscaping improvements on the South Interchange Reconstruction Project. The landscaping improvements include all the planted vegetation as well as the boulders, rocks, gabions, signs, decorative fence and paintings on any structures. The City is also responsible for any graffiti removal as well as the maintenance on the trail overpass deck and parapet walls. This agreement allows the City to access UDOT's right of way to maintain the landscaping improvements as long as proper permits are obtained and UDOT's codes and guidelines are complied with. The agreement also allows the City to expand the landscaping improvements in the future based on UDOT approved plans.

Also attached is a summary sheet showing the landscaping items that are proposed for the south interchange project. The items in the base bid are guaranteed to be installed. The items in the additive bids are listed in the order that they will be installed as money is available. We will have a better idea of exactly what will be installed by the end of next week when the final bids on the project will be received.

## MAINTENANCE AGREEMENT

I-15, South Cedar Interchange  
F-I15-2(54)57

**THIS AGREEMENT** made and entered into this day of \_\_\_\_\_, 2014 (the "Effective Date") by and between the **UTAH DEPARTMENT OF TRANSPORTATION**, hereafter referred to as **UDOT** and **CEDAR CITY OR ITS ASSIGNS**, a Municipal Corporation of the State of Utah, hereinafter referred to as **CITY**.

### RECITALS

WHEREAS, **UDOT** will construct a federal aid project, F-I15-2(54)57, Pin: 9951, South Cedar City Interchange ("Project"); and

WHEREAS, **CITY** desires to construct and maintain landscaping and specific infrastructure features ("Improvements") as described below along I-15 and SR-130 (Cross Hollow Road) at the South Cedar Interchange in Cedar City, Iron County, Utah; and

WHEREAS, the parties desire to enter into a maintenance agreement for the "Improvements" on portions of UDOT's right-of-way as shown on the attached Exhibit A, which is incorporated by reference; and

WHEREAS, **CITY** desires to do future landscaping improvements beyond the Project at its own expense; and

WHEREAS, this Agreement is made to set forth the terms and conditions where under said work shall be performed.

### AGREEMENT

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

1. **UDOT** will allow **CITY** access on state right-of-way at the South Cedar Interchange of I-15 at approximately MP 56.673 to MP 57.300 and SR-130 (Cross Hollow Road) between approximately Providence Center Dr. and the intersection of Old Highway 91 and Main Street at 1288 South Main in Cedar City; including the Diverging Diamond Interchange (DDI), gore and adjacent areas, for the purposes of maintaining landscape features (e.g. pruning, mowing, replacing plant material, repair of irrigation systems, decorative stone, erosion control, weed control, litter control, etc.)

2. **CITY** will access the above described locations for routine care and maintenance of the "Improvements" within **UDOT's** right-of-way as long as work is outside the safety zone (Project site clear zone as measured from painted white line on mainline and painted white line on ramps). All work within **UDOT's** right-of-way requires approved DOT orange clothing or outer wear. If working within the clear zone, **CITY** will obtain a **UDOT** permit in accordance with Utah Administrative Code R930-6.

3. Any work within the safety zone will be allowed if traffic control is implemented according to the Manual on Uniform Traffic Control Devices (MUTCD) guidelines. If work will require that lane(s) of

traffic will be impacted, **CITY** must obtain a permit from **UDOT** for approval of the traffic control plan in accordance with the MUTCD and R930-6.

4. **CITY** will establish and maintain future soft-scape features such as trees, shrubs, and irrigation system during the term of this Agreement. If the trees or shrubs fail to survive, **CITY** will replant and establish the vegetation or remove all vegetation that failed to survive. **CITY** accepts maintenance responsibility for all "Improvements", including the clearing of debris, weed control, trash and maintaining drainage.

5. **CITY** will maintain all hard-scape features such as boulders, rock mulch, gabion basket walls, monument signs, etc.

6. **UDOT** is the owner of the real property on which said "Improvements" are installed. Before **CITY** performs any additional changes (improvements) to the landscaped areas, **CITY** will submit plans to **UDOT** for review and approval.

7. If **UDOT** decides to use the right-of-way for any of its projects or transportation purposes, **CITY** shall remove and/or relocate the landscaping improvements at **CITY**'s expense and **UDOT** will not replace or reimburse **CITY** for the improvements.

8. **CITY** will maintain all enhanced treatments on all structures, barriers, and walls including but not limited to, coloring, staining, artwork, or aesthetics mounted onto any portion of the structure. **CITY** will also be responsible for graffiti removal. All graffiti shall be removed within three days unless weather prevents the removal.

9. When the new DDI Interchange is complete, **CITY** will utilize Structure No. C-502 (the flyover structure) for a livestock and pedestrian trail. **CITY** will maintain the deck of the structure and the parapets. **CITY** will immediately repair any spalling of the parapet resulting in concrete falling onto the freeway. **CITY** will also maintain the wrought iron fence on said structure.

10. **CITY** will maintain the livestock and pedestrian trail. Any fencing placed on the livestock and pedestrian trail will be maintained by **CITY**. Any **UDOT** surplus property that contains the livestock and pedestrian trail will be transferred with a 25 ft. easement for the trail.

11. **CITY** will maintain the colored concrete in the median fillers associated with the aesthetic treatment along SR-130 and Cross Hollow.

12. **CITY** will maintain the street lighting on Cross Hollow and will be responsible to pay the electricity costs for the street lighting.

13. **CITY** will maintain the lighting for the sidewalk through the DDI and will be responsible to pay the electricity costs for the lighting.

14. **CITY** will be responsible for maintenance of the sidewalk through the Project limits, including snow removal.

15. Initial term of this Agreement will be ten (10) years; then at the end of the ten (10) year period it will be automatically renewed by ten (10) year increments unless the parties enter into a new agreement.

16. If at such time and if required by **UDOT** for transportation purposes, **CITY** will restore the landscaped areas to meet **UDOT** clear zone standards.

17. The **CITY** and **UDOT** are both governmental entities as defined in the Utah Governmental Immunity Act (the "Act"). Nothing in this Landscape Maintenance Agreement shall be deemed as a waiver by either or both parties of any defenses or protections provided by the Act. Nor shall this Agreement be construed, with respect to third parties, as a waiver of any governmental immunity to which a party to this Agreement is otherwise entitled. Each party agrees to indemnify, defend, and save harmless the other from and against all claims, suits and costs, including attorneys' fees for injury or damage of any kind, arising out of its negligent acts, errors or omissions of its officers, agents, contractors or employees in the performance of this agreement, and from and against all claims, suits, and costs, including attorneys' fees for injury or damage of any kind. Nothing in this paragraph is intended to create additional rights to third parties or to waive any of the provisions of the Governmental Immunity Act. The obligation to indemnify is limited to the dollar amounts set forth in the Governmental Immunity Act, provided the Act applies to the action or omission giving rise to the protections in this paragraph. This provision shall survive the termination of this Agreement.

18. This Agreement may be executed in counterparts by **UDOT** and **CITY**.

19. This Agreement shall be governed by the laws of the State of Utah both as to interpretation and performance.

20. This Agreement in no way creates any type of agency relationship, joint venture, or partnership between **CITY** and **UDOT**.

21. This Agreement, together with the exhibit, constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations, verbal or written. No subsequent modification or amendments will be valid unless in writing and signed by both parties.

22. Acceptance by either party of any performance less than required by this Agreement shall not be deemed a waiver of rights of such party to enforce all terms and conditions. No waiver of any such rights shall be binding unless reduced to writing and signed by the party to be charged.

23. Each party represents that it has the authority to enter into this Agreement.



IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by its duly authorized officers as of the day and year first above written.

**UTAH DEPARTMENT OF  
TRANSPORTATION**

**ATTEST:**

BY: \_\_\_\_\_  
Region Director

Title: \_\_\_\_\_

BY: \_\_\_\_\_  
Region Landscape Architect

Title: \_\_\_\_\_

BY: \_\_\_\_\_  
Region Project Manager

Title: \_\_\_\_\_

\*\*\*\*\*

**CEDAR CITY**

**ATTEST:**

BY: \_\_\_\_\_  
Mayor

Title: \_\_\_\_\_

\*\*\*\*\*  
\*\*\*\*\*

SHEET NO.	1
--------------	---

UTAH  
DEPARTMENT OF TRANSPORTATION

# PLANS OF PROPOSED STATE ROAD FEDERAL AID PROJECT

F-115-2(54)57 PIN: 9951

## I-15; South Cedar City Interchange

## OTHER-ROADWAY PROJECT

## IRON

LENGTH 1,500 MILES

CROSS H  
STA. 39+65.00  
BEGIN PROJECT  
E-115-2(54)57

N. 209812.1133  
E. 111147.9789

F-115-2(54)57

SEC. 22  
T. 36 S.  
S. 1 B. N. R. 17 W.  
& M.

L-15 NB STA. 1738+49.25  
BEGIN PROJECT  
F-115-2(54)57

N. 205469.3998  
E. 109617.7167

CROSS H  
STA. 61+00.00  
END PROJECT  
F-15-2(54)57

N. 209783.2091  
E. 113100.0412

I-15 NB STA. 1787+50.00  
END PROJECT  
F-115-2(54)57

N. 209707.6861  
E. 112028.3749

VERIFIED FOR SUBMISSION FOR ADVERTISEMENT

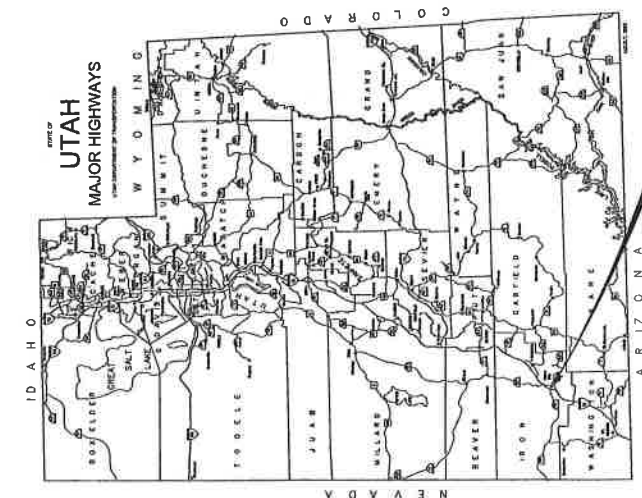
DESIGN ENGINEER

UTAH DEPARTMENT OF TRANSPORTATION

APPROVED FOR USE BY UDOT

REGION FOUR PRECONSTRUCTION ENGINEER

THIS SEAL APPLIES TO ALL SHEETS  
CONTAINING THIS SIGNATURE



**CEDAR CITY  
COUNCIL AGENDA ITEM 9  
STAFF INFORMATION SHEET**

**TO:** Mayor and Council

**FROM:** Kit Wareham

**DATE:** February 5, 2014

**SUBJECT:** Consider Agreement with Rocky Mountain Power to Up-Grade Electrical Power Service to the Wastewater Treatment Plant for the Nitrate Removal Project

**DISCUSSION:** The new Nitrate Removal Project at the Wastewater treatment Plant will require the current Rocky Mountain Power feed to the plant to be up-graded. In order for Rocky Mountain Power to upgrade this power feed they require the City enter into the attached General Services Contract. After all credits for the current and additional power use of about \$8,000 per month at the plant have been given to the City, Rocky Mountain Power will not charge the City for any up-front cost to provide this additional power service. Rocky Mountain Power cost for the project will be about \$65,000.

There are also requirements in the agreement for the City to provide necessary rights-of-way and provide and install the necessary conduits. The next agenda item will address the required rights of way and the installation of the conduits is included in the contract of the contractor who is installing the plant up-grades. RMP is requesting the City to sign the attached contract before they can provide the power.

(UT May2013)  
Account #:75494886 019  
Service ID #:167709803  
Monthly

Kendall K Cripps  
C/C: 11391  
Request #: 5742978  
Contract #:

**GENERAL SERVICE CONTRACT  
(1000 KW OR LESS)  
between  
ROCKY MOUNTAIN POWER  
and  
CEDAR CITY CORPORATION**

This General Service Contract ("Contract"), dated January 28, 2014, is between PacifiCorp, doing business as Rocky Mountain Power ("Company"), and **Cedar City Corporation** ("Customer"), for electric service for Customer's Waste Water Plant Nitrate Mitigation operation at or near 7218 North 2300 West Cedar City, Utah.

The Company's filed tariffs (the "Electric Service Schedules" and the "Electric Service Regulations") and the rules of the Utah Public Service Commission ("Commission"), as they may be amended from time to time, regulate this Contract and are incorporated in this Contract. In the event of any conflict between this Contract and the Electric Service Schedules or the Electric Service Regulations, such schedule and rules shall control. They are available for review at Customer's request.

1. **Delivery of Power.** Company will provide 277/480 volt, three-phase electric service to the Customer facilities.
2. **Contract Demand.** The specified Demand in kW that Customer requires to meet its load requirement and Company agrees to supply and have available for delivery to Customer, shall be 500 kW (diversified, based on Customer's submitted load prior to the signing of this Contract) unless otherwise agreed in writing in accordance with the terms of this Contract. Within fifteen (15) days of the written request for additional demand, Company shall advise Customer in writing whether the additional power and energy is or can be made available and the conditions on which it can be made available.
3. **Extension Costs.** Company agrees to invest \$65,318.00 (the "Extension Allowance") to fund a portion of the cost of the improvements (the "Improvements") as per tariff. Customer agrees to pay Company the estimated construction costs in excess of the Extension Allowance ("Customer Advance"). Customer has paid for engineering, design, or other advance payment for Company's facilities in the amount of \$0.00, which amount is reflected in the balance due in the Customer selected option below. **(Customer must initial selected option on the blank space at the beginning of the option and pay the balance due given in that option.)**

— **Refund Option.** The total Customer Advance for this work is \$0.00, and the **balance due is \$0.00**, and Customer remains eligible for refunds. Company will refund part of the Customer Advance if additional customers connect to the Improvements within sixty (60) months of the date the Company is ready to supply service. Company will refund 25% of the refundable Customer Advance allocable to the **shared** Improvements for three additional applicants. The Company will try to inform Customer when a refund is due. However, in the event Company is unable to locate Customer or has not identified that a refund is due, **Customer is**

responsible for requesting a refund within twenty-four (24) months of the additional applicant connecting to the Improvements.

— **Contract Administration Credit Option.** Customer chooses to receive a Contract Administration Credit of \$250 and waives their right to refunds should additional applicants connect to the Improvements. Accordingly, the balance due is \$0.00.

4. **Contract Minimum Billing.** Customer agrees to pay a contract minimum billing (the "Contract Minimum Billing") during the first sixty (60) months beginning from the date the Company is ready to supply service. The Contract Minimum Billing shall be the greater of: (1) the **Customer's monthly bill**; or, (2) \$816.48 (the **monthly facilities charge**) plus eighty percent (80%) of the **Customer's monthly bill**. Billings will be based on Rate Schedule No. 6 and superseding schedules. The Company will reduce the minimum charges by the amount of the facilities charges associated with refunds due from additional applicants connecting to the Improvements.
5. **Effective.** This Contract will expire unless Customer signs and returns an original of this Contract along with any required payment to Company within ninety (90) days of the Contract date shown on page 1 of this Contract.
6. **Term.** This Contract becomes binding when both the Company and Customer have signed it, and will remain in effect for five (5) years following the date when the Company is ready to supply service.

In the event Customer terminates service or defaults (which results in termination of service) within the first five (5) years of this Contract, Customer shall be responsible for paying the remaining Contract Minimum Billing for the remainder of the five year term.

If Customer is not ready to receive service from Company within one-hundred fifty (150) days of the Customer signature date given on page five (5), then Company may unilaterally terminate this Contract. If Company has not installed Improvements, then such termination of this Contract shall not be treated as a Customer default and Customer shall not be responsible for paying the Contract Minimum Billing for the five (5) year term, only Customer's advance will be applied to Company costs incurred for design, permitting and other associated Contract costs. However, if Company has installed Improvements so that Company is ready to supply service, but Customer is not ready to receive service from Company within said one-hundred fifty (150) days, then the failure of Customer being ready to receive service from Company may be treated as a Customer default, and Customer shall be responsible for paying the Contract Minimum Billing for the five (5) year term.

7. **Customer Obligations.** Customer agrees to:
  - a) Provide legal rights-of-way to Company, at no cost to the Company, using Company's standard forms. This includes rights-of-way on Customer's property and/or adjoining property and any permits, fees, etc. required to cross public lands;
  - b) Prepare the route to Company's specifications;
  - c) Install all Customer provided trench, conduit, equipment foundations, or excavations for equipment foundations within the legal rights-of-ways; and,
  - d) Comply with all of Company's tariffs, procedures, specifications and requirements.

8. **Special Provisions:** Customer will supply and install all trench, conduit ( schedule 40 grey pvc ), backfill, cleanup, concrete pad vaults and metering equipment that complies with Rocky Mountain Powers ESR book requirements.
9. **Underground Facilities.** If service is provided by an underground line extension, Customer will provide, or Company will provide at Customer's expense: all trenching and backfilling, imported backfill material, conduit and duct, and furnish and install all equipment foundations, as designed by the Company. Company may abandon in place any underground cables installed under this Contract that are no longer useful to Company.

Customer warrants that all Customer provided trench and excavations for equipment foundations, and Customer installed conduit and equipment foundations are installed within legal rights-of-way, and conform to the specifications in the Company's Electric Service Requirements Manual, and other specifications as otherwise provided by the Company. In the event Customer fails to comply with the foregoing, Customer shall be liable for the cost to the Company for relocating the facilities within a legal right-of-way, acquiring right-of-way for the Company facilities, repair or replacement of improperly installed conduit or foundations, and paying costs for damages that may arise to any third party as a result of the Company facilities being located outside of a legal right-of-way. The provisions of this paragraph 9 shall survive the termination of this agreement.

10. **Design, Construction, Ownership and Operation.** The Company shall design, construct, install, and operate the Improvements in accordance with the Company's standards. The Company will own the Improvements, together with the Company's existing electric utility facilities that serve or will serve Customer. Construction of the Improvements shall not begin until (1) both the Company and Customer have executed (signed) this Contract, and (2) all other requirements prior to construction have been fulfilled, such as permits, payments received, inspection, etc. Any delays by the Customer concerning site preparation and right-of-way acquisition or trenching, inspection, permits, etc. may correspondingly delay completion of the Improvements.

The Company warrants that its work in constructing and maintaining the Improvements shall be consistent with prudent utility practices. **THE COMPANY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND SIMILAR WARRANTIES.** The Company's liability for breach of warranty, defects in the Improvements, or installation of the Improvements shall be limited to repair or replacement of any non-operating or defective portion of the Improvements or the Company's other electric utility facilities. Under no circumstances shall the Company be liable for other economic losses, including but not limited to consequential damages. The Company shall not be subject to any liability or damages for inability to provide service to the extent that such failure shall be due to causes beyond the reasonable control of the Company.

No other party, including Customer, shall have the right to operate or maintain the Company's electric utility facilities or the Improvements. Customer shall not have physical access to the Company's electric utility facilities or the Improvements and shall engage in no activities on or related to the Company's electric utility facilities or the Improvements.

11. **Payments.** All bills shall be paid by the date specified on the bill, and late charges shall be imposed upon any delinquent amounts. Company reserves the right to require customer payments be sent by EDI or wire transfer. If Customer disputes any portion of

Customer's bill, Customer shall pay the total bill and shall designate the disputed portion. Company shall decide the dispute within sixty (60) days after Customer's notice of dispute. Any refund Company determines Customer is due shall bear interest at the rate then specified by the Commission or, if no rate is specified, the then effective prime rate as established by the Morgan Guaranty Trust Bank of New York.

The Company may request deposits from Customer to the extent permitted under the applicable Electric Service Regulations and the applicable Electric Service Schedule. In the event of a default by Customer in any of its obligations, the Company may exercise any or all of its rights and remedies with respect to any such deposits.

12. **Furnishing Information.** Upon the Company's request, Customer shall submit its year-end financial statements to the Company, certified to be true and correct and in accordance with GAAP (General Accepted Accounting Principles). Furthermore, Customer shall submit additional information as the Company may reasonably request from time to time in furtherance of the purposes of this Contract. Such information shall be deemed confidential. The Company will base its decision with respect to credit, deposits or any other material matter on information furnished under this section by Customer, and shall reserve its rights with respect to such decisions should such information be inaccurate.
13. **Governing Law; Venue.** All provisions of this Contract and the rights and obligations of the parties hereto shall in all cases be governed by and construed in accordance with the laws of the State of Utah applicable to contracts executed in and to be wholly performed in Utah by persons domiciled in the State of Utah. Each party hereto agrees that any suit, action or proceeding in connection with this Contract may only be brought before the Commission, the Federal courts located within the State of Utah, or state courts of the State of Utah, and each party hereby consents to the exclusive jurisdiction of such forums (and of the appellate courts therefrom) in any such suit, action or proceeding.
14. **Assignment.** The obligations under this Contract are obligations at all times of Customer, and may not be assigned without the Company's consent except in connection with a sale, assignment, lease or transfer of Customer's interest in Customer's facility. Any such assignment also shall be subject to (i) such successor's qualification as a customer under the Company's policies and the Electric Service Regulations, the applicable Electric Service Schedule, and (ii) such successor being bound by this Contract and assuming the obligation of Customer from the date of assignment, which may be evidenced by written agreement of such successor or other means acceptable to the Company. The Company may condition this assignment by the posting by the successor of a deposit as permitted under the applicable Electric Service Regulations and the applicable Electric Service Schedule.
15. **Remedies; Waiver.** Either party may exercise any or all of its rights and remedies under this Contract, the applicable Electric Service Regulations, the applicable Electric Service Schedule and under any applicable laws, rules and regulations. No provision of this Contract, the Electric Service Regulations, or the applicable Electric Service Schedule shall be deemed to have been waived unless such waiver is expressly stated in writing and signed by the waiving party.
16. **Attorneys' Fees.** If any suit or action arising out of or related to this Contract is brought by any party, the prevailing party or parties shall be entitled to recover the costs and fees (including, without limitation, reasonable attorneys' fees, the fees and costs of experts and consultants, copying, courier and telecommunication costs, and deposition costs and all

other costs of discovery) incurred by such party or parties in such suit or action, including, without limitation, any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit or action.

17. **Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.
18. **Entire Agreement.** This Contract contains the entire agreement of the parties with respect to the subject matter, and replaces and supersedes in their entirety all prior agreements between the parties related to the same subject matter. This Contract may be modified only by a subsequent written amendment or agreement executed by both parties.

**CEDAR CITY CORPORATION**

By \_\_\_\_\_  
signature

\_\_\_\_\_  
NAME (type or print legibly) TITLE

\_\_\_\_\_  
DATE

Customer's Mailing Address for Executed Contract

Kit Wareham  
ATTENTION OF

10 North Main Street  
ADDRESS

Cedar City, Utah 84720 2635  
CITY, STATE, ZIP

**ROCKY MOUNTAIN POWER**

By \_\_\_\_\_  
signature

Tony Bell Manager  
NAME (type or print legibly) TITLE

\_\_\_\_\_  
DATE

Rocky Mountain Power's Mailing Address for Executed Contract

Attn: Kendall K Cripps  
2217 West Kittyhawk Drive  
ADDRESS

Cedar City, Utah 84721  
CITY, STATE, ZIP



**CEDAR CITY  
COUNCIL AGENDA ITEM 10  
STAFF INFORMATION SHEET**

**TO:** Mayor and Council

**FROM:** Kit Wareham

**DATE:** February 5, 2014

**SUBJECT:** Consider Granting an Easement to Rocky Mountain Power to Provide an Up-Graded Electrical Power Service to the Wastewater Treatment Plant for the Nitrate Removal Project

**DISCUSSION:**

In order for Rocky Mountain Power to install their power lines and equipment to upgrade the power service to the Wastewater Treatment Plant for the Nitrate Removal Project they require the City to provide the necessary 20 foot wide easements. These easements are shown on the attached drawing and described in the attached easement agreement. The granting of these easements has been recommended by the City Planning Commission as shown on the attached minutes.



SHEET NO. 1	POWER EASEMENT FOR WWTP	CEDAR CITY 10 NORTH MAIN STREET CEDAR CITY, UTAH 84720 PH. (435) 500-2863	REVISIONS				SCALE: 1"=30'	DATE: 7/2013
			NO	DESCRIPTION	DATE	BY		
FILE:	LOC. IN SECTION 28, T35S, R11W, S1&2M, IRON COUNTY						DRAWN: T.B.M.	CHECKED: J.C.N.

REV101512

Return to:

Rocky Mountain Power

Kendall K Cripps

2217 West Kittyhawk Drive

Cedar City, Utah 84721

Project Name: Cedar City Corporation, Nitrate Mitigation Operation

WO#: 5742978

RW#: 1

### **UNDERGROUND RIGHT OF WAY EASEMENT**

For value received, (Insert Grantor as written on most recent vesting deed) ("Grantor"), hereby grants to PacifiCorp, an Oregon Corporation, d/b/a Rocky Mountain Power its successors and assigns, ("Grantee"), an easement for a right of way (Insert width in feet) feet in width and (Insert Length Here) feet in length, more or less, for the construction, reconstruction, operation, maintenance, repair, replacement, enlargement, and removal of underground electric power distribution and communication lines and all necessary or desirable accessories and appurtenances thereto, including without limitation: wires, fibers, cables and other conductors and conduits therefor; and pads, transformers, switches, cabinets, and vaults on, across, or under the surface of the real property of Grantor in **Iron** County, State of **Utah** more particularly described as follows and as more particularly described and/or shown on Exhibit(s) A attached hereto and by this reference made a part hereof:

Legal Description: (Insert legal description or property description here)

Assessor Parcel No.

(Insert Parcel No. Here)

Together with the right of access to the right of way from adjacent lands of Grantor for all activities in connection with the purposes for which this easement has been granted; and together with the present and (without payment therefor) the future right to keep the right of way clear of all brush, trees, timber, structures, buildings and other hazards which might endanger Grantee's facilities or impede Grantee's activities.

At no time shall Grantor place or store any flammable materials (other than agricultural crops), or light any fires, on or within the boundaries of the right of way. Subject to the foregoing limitations, the surface of the right of way may be used for agricultural crops and other purposes not inconsistent, as determined by Grantee, with the purposes for which this easement has been granted.

The rights and obligations of the parties hereto shall be binding upon and shall benefit their respective heirs, successors and assigns.

To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
*(Insert Grantor Name Here)* GRANTOR

\_\_\_\_\_  
*(Insert Grantor Name Here)* GRANTOR

**Acknowledgment by a Corporation, LLC, or Partnership:**

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public in and for said State, personally appeared \_\_\_\_\_ (name), known or identified to me to be the \_\_\_\_\_ (president / vice-president / secretary / assistant secretary) of the corporation, or the (manager / member) of the limited liability company, or a partner of the partnership that executed the instrument or the person who executed the instrument on behalf of said entity, and acknowledged to me that said entity executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
(notary signature)

NOTARY PUBLIC FOR \_\_\_\_\_ (state)  
Residing at: \_\_\_\_\_ (city, state)  
My Commission Expires: \_\_\_\_\_ (d/m/y)



CEDAR CITY COUNCIL  
AGENDA ITEMS IV - 11  
DECISION PAPER

**TO:** Mayor and City Council

**FROM:** Paul Bittmenn

**DATE:** February 3, 2014

**SUBJECT:** Event liability insurance

**DISCUSSION:**

Cedar City has made an effort to host a wide variety of events. In any given year we host the orchestra of southern Utah, music arts, various baseball and softball tournaments, parades, multiple gatherings in Main Street Park, rodeos, carnivals, and much more. All of these activities carry potential liabilities for the City. So it has been the practice to require liability insurance. Event insurance is available to most events in million dollar increments. The cost becomes difficult for some smaller entities especially if the City requires three million in insurance or more.

The idea behind the attached resolution is to have a guide for staff to determine how much insurance is going to be required for each event. The structure of the resolution is the department head over the facility seeking to be used will use the guidance of the resolution to figure out an amount, if the department head has questions they are encouraged to talk with the legal department. If discussion with the legal department does not resolve the issue the opinion of the City Manager is final.

The resolution sets out a couple of categories: (1) no insurance required; (2) \$1,000,000 required; (3) \$2,000,000.00 required; and (3) \$3,000,000.00 required. Under each type of event we have attempted to provide some examples of the types of events so that the policy can be used as a guide.

Please understand even if we require an event to provide insurance and name the City as an additional insured it does not mean there will never be a cost to the City. While insurance is a method to shift risk from one party to another it does not get around possible defense costs associated with an action brought against the City. Also, if the City's facilities are not maintained and the poor maintenance of the City's facilities causes an injury the event insurance will not protect the City.

Please consider the resolution. If you have any questions please ask.





CEDAR CITY RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CEDAR CITY COUNCIL ADOPTING GUIDELINES AND PROCEDURES FOR  
DETERMINING INSURANCE COVERAGE REQUIREMENTS.

**WHEREAS**, Cedar City does business with numerous outside entities such as youth and adult sports organizations, carnivals, festivals, art groups, weddings, socials, and others who in some manner lease or use City property; and

**WHEREAS**, Cedar City passes on the cost for insurance to various groups it does business with in order to defray the expense for liability and direct costs away from Cedar City; and

**WHEREAS**, there are some liabilities related to operation and maintenance the City cannot pass on to third party vendors so when the City allows use of its property and/or facilities the City carries potential liabilities and the costs associated therewith; and

**WHEREAS**, insurance to groups doing business with the City is available from private insurance providers in million dollar increments. Policies with higher coverage limits cost more money; and

**WHEREAS**, the City has some protection under the Utah Governmental Immunity Act, UCA §63G-7-101 et. sec. limits certain judgments against governmental entities in Utah. Pursuant to the statutory scheme the limits on liability are adjusted every two (2) years. Currently the highest limit on liability is \$2,308,400 aggregate amount of individual awards that be may awarded in relation to a single occurrence; and

**WHEREAS**, in order for the City to pass all liability to the third party using City property the City would have to require three million dollar (\$3,000,000.00) insurance policies; and

**WHEREAS**, many of the entities doing business with the City are small civic groups or not for profit groups that cannot afford three million dollars (\$3,000,000.00) insurance policies; and

**WHEREAS**, many of the events hosted by Cedar City come with relatively low risk and it may be reasonably possible for the City to require less insurance coverage from those activities with lower risk.

**NOW THEREFORE**, it is resolved by the City Council of Cedar City, State of Utah that the following shall be the basic guidelines City Staff is directed to use when determining which activities are to provide which amounts of insurance. Furthermore, in the case of a question as to the appropriate amount of insurance City Staff shall use the procedure contained herein to reach an appropriate insurance requirement.

1. The guidelines contained below shall be used as a guide by City Staff when assessing the amount of insurance an individual event or activity shall be required to obtain. These guidelines are to be used so that future events can be grouped with events having similar crowd sizes and relative risk to persons and property.

- A. Activities with similar numbers of anticipated participants and risk will not be required to provide insurance<sup>1</sup>:
1. Park pavilion rentals for groups less than 100 people. Types of activities in this category shall be similar to family reunions, company picnics, social gatherings, and church parties.
  2. Free public events.
  3. Not for profit outdoor dances with an estimated attendance of 500 people or less.
  4. Parades.
  5. Community rally or march.
  6. Art Festivals.
  7. Walks.
  8. Unless the event planned for the Heritage Center or Festival Hall requires insurance pursuant to another section of this policy, use of the Heritage Theater or Festival Hall.
- B Activities with similar number of anticipated participants and risk will be required to obtain a one million dollar (\$1,000,000.00) insurance policy:
1. 5k/10k runs
  2. Baseball/softball tournaments.
  3. Swimming meets.
  4. Musical concerts
  5. Soccer tournaments.
  6. Not for profit outdoor dances with anticipated attendance greater than 500 people.
  7. Fly ball events and equipment leases.
  8. Bicycle races.
  9. Events using City's portable stage.

---

<sup>1</sup> Activities using animal rides, inflatable slides or other interactive inflatable attractions, mechanical rides, climbing walls, or other similar devices and meeting the broad categories contained herein shall be moved to another category for determination of the appropriate insurance coverage.

10. Road races.
  11. Triathlon.
  12. Equestrian events, other than rodeos, with anticipated attendance of more than \_\_\_\_\_ people.
  13. Sports leagues unless otherwise specified in a contract.
  14. Utah Summer Games.
- C. Activities with similar number of anticipated participants and risk will be required to obtain a two million dollar (\$2,000,000.00) insurance policy:
1. Events using the City's portable stage with anticipated attendance with over 500 hundred.
  2. Events incorporating, associated with, or offering: animal rides, inflatable slides or other interactive inflatable attractions, mechanical rides or amusement devices, climbing walls, food or liquor, or other similar devices.
  3. Soap box derby.
  4. Events using the top floor of the City parking garage for something other than parking.
- D. Activities with similar number of participants and risk will be required to obtain a three million dollar (\$3,000,000.00) insurance policy:
1. Rodeos.
  2. Carnivals.
  3. Circus.
  4. Aircraft or hot air balloons.
  5. Motorized racing vehicles.
  6. Participants.
  7. Events where the anticipated attendance is greater than 250 people and the event is offering, associated with, or incorporating large animals, interactive inflatable attractions, climbing walls, or any sort of projectile.
2. When estimating the number of persons in attendance staff shall be allowed to rely on the representations from the event sponsor and in the case of a repeat event the staff will be

allowed to use past years attendance. Event attendance for a multi-day event shall be the total attendance during the entire duration of the event.

3. Individual departments have more experience with the events they normally work with and are encouraged to use that experience when determining the level of insurance. Department heads shall be responsible for administering this resolution when the events will be using the department's facilities. If an event is going to use facilities from more than one department the department heads will coordinate their efforts so the information given to the event sponsor is consistent. If there is a question as to the proper amount of required insurance department heads are encouraged to consult with the legal department. If there is further question as to what insurance should be required the decision of the City Manager is final.
4. Insurance policies are for general liability covering each occurrence, damages to the rented premises, personal injury, products, and a general aggregate. The minimum insurance required above shall be for the general liability with the other insurances provided at standard industry amounts. All policies must cover the event related liabilities of the insured and additional insured parties. If appropriate to the event the insurance policy shall include other areas of coverage as are appropriate. Rates for additional coverage areas shall meet the minimum requirements of this policy. Insurance policies must be on a per occurrence basis and name Cedar City Corporation as an additional insured.
5. Insurance policies will be accepted from a reputable provider. The event host is responsible for obtaining appropriate insurance. Using a local insurance vendor is encouraged. The event host may also inquire with City staff for event insurance offered through the City's affiliation with URMMA which will cover the entire event including City's liability for its operation and maintenance of the facility.

This resolution, Cedar City Resolution No. \_\_\_\_\_, will be effective upon passage.

Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Abstained \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAILE L. WILSON  
MAYOR

[SEAL]  
ATTEST:

\_\_\_\_\_  
RENON SAVAGE  
RECORDER

**CEDAR CITY COUNCIL**  
**AGENDA ITEM 12**

**INFORMATION SHEET**

**TO:** Mayor and City Council

**FROM:** Rick Holman

**DATE:** February 3, 2014

**SUBJECT:** Purchasing Policy review

**DISCUSSION:** With the recent purchase of police vehicles, a request was made to review the Purchasing Policy that allows the City staff to use the State of Utah purchasing contracts for products. The State contract method is an allowable method due to the assumption that the State General Services Department has gone through a competitive bid/proposal process for items listed on the State Contracts website.

A suggestion was made to consider including language that would allow local vendors, if they are not a "State Contract vendor", to be considered for the purchase if their price is no more than one percent (1%) higher than the State Contract price.

Attached is a copy of a resolution modifying the section of the Purchasing Policy that addresses State and other municipal government bid lists.



## **Park and Rec Advisory Board Community Appointments**

### **Bonnie Jones Bio**

I am married to Dallas Jones, He is employed at SUU. We have two Boys; Jordan who is attending Southern Utah University, majoring in Business, accounting and Finance. Jesse a senior at Cedar High and is preparing for a two year LDS service mission. We enjoy nature and the opportunity's it gives us to grow together as a family.

I am a local business owner, Hair Static I love being out and among the people of Cedar City. I love to run, ride bikes, swim and anything that requires physical fitness. Thanks for this chance to be a part of a great community!

### **Derek Morton Bio**

Derek grew up being involved in rec leagues at many different levels from the time he was young. During the summers while he was in High School he earned money by refereeing in soccer tournaments all over Northern Utah, as well as coaching. Since moving to Cedar and his kids finally becoming old enough to play Derek has been able to coach both of his kids in both the CCFC (formerly known as KICKS), and AYSO. He has also served on the Kicks Board of Directors overseeing their Social Media engagement, and the development of their website.

Derek is also currently in charge of Market Development for Mountain View Title, and is part owner of SnoMania SodaRun with locations in Cedar City, and Richfield. Since moving to Cedar City almost 7 years ago he's been active in the community and has served as Chairman of the Board of the Chamber of Commerce, Iron County Festival of Homes Chairman, and Spokesman for the People for the Ethical Treatment of Property Owners (PETPO).





CEDAR CITY COUNCIL  
AGENDA ITEM V - 14  
DECISION PAPER

**TO:** Mayor and City Council

**FROM:** Paul Bittmenn

**DATE:** February 3, 2014

**SUBJECT:** Discuss modifications to City's animal control ordinance to permit the keeping of rabbits.

**DISCUSSION:**

During the January 29, 2014, City Council meeting a citizen brought her concern over the City's ordinance that does not allow the keeping of rabbits within Cedar City. This item is on your agenda for discussion this week. The purpose of this paper is to provide some basic information about the City's current animal control ordinance.

The City has an animal control ordinance. The current ordinance was adopted in 2007 and it repealed and replaced the 1991 ordinance that had been amended from time to time. The regulatory scheme in regards to rabbits in the 1991 ordinance was they were prohibited without a permit from the Southwest Utah Health Department. The regulatory scheme in the 2007 ordinance is to prohibit the keeping of rabbits. I am not sure if the health department was actually issuing rabbit permits when the ordinance was changed in 2007.

The City's current animal control ordinance is located in Chapter 11 of the City's ordinances. It allows the keeping of domestic animals. It also prohibits, among other things, the keeping of livestock and exotic animals. Below are the ordinance definitions for Domestic Animals, Exotic Animals, and Livestock:

**Domesticated Animals:** means animals accustomed to living in or about the habitation of man that are not included in the definition of livestock, exotic animal, or wild animal, as defined by this Chapter and as supplemented by Federal Wildlife Code, Chapter 13, as amended.

**Exotic Animal:** means any animal that is not livestock or a domesticated animal and includes, but is not limited to, no matter how well-trained: all alligators and crocodiles; all bears; all cats other than the commonly accepted domesticated cats, including but not limited to cheetah, leopard, lion, lynx, panther, cougar, mountain lion, bobcat, and tiger; all dogs other than domesticated dogs, including but not limited to wolf, part wolf, fox, part fox, coyote, and part coyote; all porcupines; all nonhuman primates; all raccoons; all skunks; all venomous fish and piranha; all venomous snakes and lizards; and all weasels other than ferrets.

**Livestock:** means cattle, domesticated elk, bison, sheep, swine, goats, poultry, llamas, rabbits, horses, mules, or other equines.

Section IX of the animal control has prohibitions related to livestock and exotic animals. These prohibitions are as follows:

**SECTION 11-IX-1 Prohibited Domestic Livestock.**

(A) It shall be unlawful for any person to own, keep, or maintain any domestic livestock within the limits of Cedar City, except for:

- (1) Any person having a prior agreement with the City to maintain livestock on their property, and/or are correctly zoned for livestock; or
- (2) Any offspring that must be bottle fed or hand fed until such time that they may eat unsupervised.

(B) Any domestic livestock that are in compliance with zoning/animal control ordinances within the limits of Cedar City must still comply with all applicable nuisance ordinances.

**SECTION 11-IX-4 Exotic Animals.**

It shall be unlawful for any person to own, keep or maintain any animal defined as exotic within the limits of Cedar City unless duly authorized or licensed as required under State and Federal law.

If the Council is considering amending the provisions prohibiting rabbits please keep the above ordinance framework in mind.

The City Council has amended the current animal control ordinance on at least one prior occasion to allow the keeping of chickens in accordance with the City's zoning ordinances. The provisions of the City's zoning ordinance related to chickens can be found in section 26-IV-18 and read as follows:

**SECTION 26-IV-18 Regulations for the Keeping of Chickens in Residential Zones.**

**(A) Residential Zones – Zones:** Chickens may be kept for non-commercial purposes on residential lots. The keeping of chickens is an accessory use as defined in Section 26-I-4(B)(1).

**(B) Number:** The number of chickens that may be kept per lot is limited to six (6).

**(C) Roosters:** The keeping of roosters is prohibited.

**(D) Slaughtering:** The slaughtering of chickens is prohibited.

**(E) Enclosures:** Chickens shall be confined within a secure, outdoor, enclosed area. The enclosure area shall include a covered chicken coop. Chicken coops with a permanent electric connection must comply with the electric code and require a building inspection.

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**(F) Setback:** the Chicken coop shall: (1) meet all required setbacks; and (2) be a minimum distance of 35 feet from any neighboring dwelling.